

AMENDED IN SENATE JANUARY 13, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 323

Introduced by Senator Vargas

February 14, 2011

An act to amend Sections 9653.6, 17900, and 23405.2 of the Business and Professions Code, to amend Section 708.310 of the Code of Civil Procedure, to amend Sections 171.03, 171.3, 1113, 1152, 1157, 2113, 6019.1, 8019.1, 12540.1, 15911.03, 15911.08, 16903, 16908, 16911, and 25005.1 of, to add Section 17657 to, and to add Title ~~2.5~~ 2.6 (commencing with Section 17701.01) to, the Corporations Code, to amend Section 12262 of the Government Code, to amend Section 1192.95 of the Insurance Code, to amend Sections 19141 and 23332 of the Revenue and Taxation Code, and to amend Section 1116 of the Unemployment Insurance Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Vargas. California Revised Uniform Limited Liability Company Act.

(1) Existing law, the Beverly-Killea Limited Liability Company Act, authorizes a limited liability company to engage in any lawful business activity, as specified, and governs the formation of limited liability companies, including requiring the members to enter into an operating agreement that shall be in writing or oral and to execute and file articles of organization with the Secretary of State.

This bill would repeal that act and enact the California Revised Uniform Limited Liability Company Act which would recast provisions governing the formation and operation of limited liability companies. The bill would also authorize an operating agreement to be in a record

or implied, in addition to being in writing or oral, and authorize a combination of those forms.

(2) Existing law establishes requirements and procedures for membership interests in limited liability companies, including voting, meeting, and inspection rights. Existing law also specifies the duties and obligations of the managers of a limited liability company, including member-managers, as specified. ~~Existing law does not provide for the existence of a series of a limited liability company.~~

~~This bill would provide that a member is not an agent of a limited liability company merely by being a member. The~~

~~The bill would also distinguish between a manager-managed limited liability company and a member-managed limited liability company for purposes of defining the scope of a member's agency and imposing fiduciary duties only on persons in control of a limited liability company. The bill would also provide for a series of a limited liability company comprised of certain assets and liabilities identified by a limited liability company as separate from the assets and liabilities of the other series of the limited liability company. The bill would authorize the establishment of classes of members.~~

(3) Existing law provides that the Secretary of State may issue a certificate of status with respect to a limited liability company.

This bill would also authorize the Secretary of State to issue a ~~certificate of existence with respect to a limited liability company and~~ a certificate of ~~authorization~~ *registration* with respect to a foreign limited liability company.

The bill would provide for the filing of specified records and would further provide that an individual who signs such a record affirms under penalty of perjury that the information in the record is accurate.

(4) Existing law does not specifically provide for jurisdiction of courts in matters regarding a limited liability company.

This bill would allow a limited liability company to be subject to the nonexclusive jurisdiction of courts in another state or the exclusive jurisdiction of California courts. The bill would also allow a member to consent to arbitration, as specified.

(5) Existing law does not specifically provide for a member to dissociate from a limited liability company.

This bill would specify when a member would be dissociated from a limited liability company and the effects of dissociation on the member.

(6) Existing law establishes capital contribution standards and liability of members, and regulates the allocation of profits and losses, distributions of money and property, withdrawal of membership, assignment of interests, and dissolution of limited liability companies. Existing law requires the registration of foreign limited liability companies, as defined, with the Secretary of State, and prohibits the transaction of business in this state by an unregistered foreign limited liability company, subject to specified penalties. Existing law also regulates the merger of a limited liability company with one or more limited liability companies or other business entities, as specified, including requiring an agreement of merger and protection of the rights and liabilities of limited liability companies, creditors, and dissenting members.

This bill would revise and recast those provisions.

(7) Because this bill would expand the scope of the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 9653.6 of the Business and Professions*
2 *Code is amended to read:*

3 9653.6. (a) No person licensed under this code as a cemetery
4 broker, cemetery salesperson, cemetery manager, funeral director,
5 embalmer, crematorium licensee, or other person licensed to
6 provide services related to cemeteries and funerals shall have any
7 ownership interest as a member in a limited liability company
8 certificated as a cemetery authority pursuant to Section 7018 of
9 the Health and Safety Code.

10 (b) If a limited liability company admits, as a member with
11 ownership interest, a licensed person described in subdivision (a),
12 the limited liability company, by operation of law, shall be deemed
13 in violation of *subdivision (e) of Section ~~17375~~ 17701.04* of the
14 Corporations Code, and the members shall be treated as partners

1 with joint and several liability for claims made upon acts, errors,
2 or omissions arising out of services provided by any licensed
3 person described in subdivision (a).

4 (c) If the bureau determines that a licensed cemetery broker,
5 cemetery salesperson, cemetery manager, funeral director,
6 embalmer, crematorium licensee, or other person licensed to
7 provide services related to cemeteries and funerals has an
8 ownership interest as a member in the limited liability company,
9 the bureau shall suspend the limited liability company's certificate
10 of authority. The bureau shall reinstate the certificate of authority
11 only upon finding that the licensed cemetery broker, cemetery
12 salesperson, cemetery manager, funeral director, embalmer,
13 crematorium licensee, or other person licensed to provide services
14 related to cemeteries and funerals has been divested of his or her
15 ownership interest in the limited liability company or has
16 voluntarily surrendered his or her license.

17 *SEC. 2. Section 17900 of the Business and Professions Code*
18 *is amended to read:*

19 17900. (a) (1) The purpose of this section is to protect those
20 dealing with individuals or partnerships doing business under
21 fictitious names, and it is not intended to confer any right or
22 advantage on individuals or firms that fail to comply with the law.
23 The filing of a fictitious business name certificate is designed to
24 make available to the public the identities of persons doing business
25 under the fictitious name.

26 (2) Nothing in this section shall be construed to impair or impede
27 the rebuttable presumption described in Section 14411.

28 (b) As used in this chapter, "fictitious business name" means:

29 (1) In the case of an individual, a name that does not include
30 the surname of the individual or a name that suggests the existence
31 of additional owners, as described in subdivision (c).

32 (2) In the case of a partnership or other association of persons,
33 other than a limited partnership that has filed a certificate of limited
34 partnership with the California Secretary of State pursuant to
35 Section 15621 or 15902.01 of the Corporations Code, a foreign
36 limited partnership that has filed an application for registration
37 with the California Secretary of State pursuant to Section 15692
38 or 15909.02 of the Corporations Code, a registered limited liability
39 partnership that has filed a registration pursuant to Section 15049
40 or 16953 of the Corporations Code, or a foreign limited liability

1 partnership that has filed an application for registration pursuant
2 to Section 15055 or 16959 of the Corporations Code, a name that
3 does not include the surname of each general partner or a name
4 that suggests the existence of additional owners, as described in
5 subdivision (c) and in Section 17901.

6 (3) In the case of a domestic or foreign corporation, any name
7 other than the corporate name stated in its articles of incorporation
8 filed with the California Secretary of State, in accordance with
9 subdivision (a) of Section 17910.5.

10 (4) In the case of a limited partnership that has filed a certificate
11 of limited partnership with the California Secretary of State
12 pursuant to Section 15621 or 15902.01 of the Corporations Code
13 and in the case of a foreign limited partnership that has filed an
14 application for registration with the California Secretary of State
15 pursuant to Section 15692 or 15902.02 of the Corporations Code,
16 any name other than the name of the limited partnership as on file
17 with the California Secretary of State.

18 (5) In the case of a limited liability company, any name other
19 than the name stated in its articles of organization and in the case
20 of a foreign limited liability company that has filed an application
21 for registration with the California Secretary of State pursuant to
22 ~~Section 17451~~ 17708.02 of the Corporations Code, any name other
23 than the name of the limited liability company as on file with the
24 California Secretary of State, in accordance with subdivision (b)
25 of Section 17910.5.

26 (c) A name that suggests the existence of additional owners
27 within the meaning of subdivision (b) is one that includes such
28 words as “Company,” “& Company,” “& Son,” “& Sons,” “&
29 Associates,” “Brothers,” and the like, but not words that merely
30 describe the business being conducted.

31 *SEC. 3. Section 23405.2 of the Business and Professions Code*
32 *is amended to read:*

33 23405.2. (a) Any limited liability company holding a license
34 under this division shall maintain a record of its members at the
35 principal office of the company in California and the record of its
36 members shall be available to the department for inspection. The
37 company shall report to the department in writing any of the
38 following:

1 (1) Issuance or transfer of memberships to any person where
2 the issuance or transfer results in the person owning 10 percent or
3 more of the voting interests of the company.

4 (2) If the limited liability company is managed by a manager
5 or managers, any change in the manager or managers of the
6 company.

7 (3) If any officer has been appointed, any change in the officers
8 of the company.

9 The report shall be filed with the department within 30 days after
10 the issuance or transfer of membership voting interests, or any
11 change in members, managers, or officers.

12 (b) Any limited liability company within the purview of this
13 section that is required under the provisions of the Federal Alcohol
14 Administration Act or the Internal Revenue Code to report to the
15 federal government the information required by this section may
16 send to the department a copy of the report at the same time as it
17 is sent to the federal government. The copy of the report sent to
18 the department by the company shall be deemed sufficient
19 compliance with the provisions of this section.

20 (c) The reporting requirements of subdivision (b) shall not apply
21 to a limited liability company that is required by law to file periodic
22 reports with the Securities and Exchange Commission.

23 (d) The person or persons who are required to sign the
24 application shall certify to the department on forms prescribed by
25 the department whether or not any member, manager, or officer
26 holds an ownership interest, directly or indirectly, in any license
27 within or without this state to manufacture, import, distribute,
28 rectify, or sell alcoholic beverages. The department may deny any
29 application or suspend or revoke any license under this section in
30 the event any member, manager, or officer holds or acquires any
31 prohibited ownership interest, directly or indirectly, in any licensed
32 business in violation of the tied-house provisions of Chapter 15
33 (commencing with Section 25500).

34 (e) The department may deny any application and suspend or
35 revoke any license of a limited liability company subject to the
36 provisions of this section where conditions exist in relation to any
37 manager, officer, or person holding 10 percent or more of the
38 voting interests of the limited liability company that would
39 constitute grounds for disciplinary action against the person if he
40 or she was a licensee.

(f) All articles of organization and operating agreements of a limited liability company or certificates or amendments thereto shall be filed with the department at the time of filing the application for the license. All articles of organization, operating agreements, certificates, or amendments executed after the issuance of the license shall be filed with the department within 30 days after execution.

(g) The requirements of this section are in addition to the requirements set forth in the ~~Beverly-Killea California Revised~~ *Uniform Limited Liability Company Act*, Title ~~2.5~~ *2.6* (commencing with Section ~~17000~~) *17701.01*) of the Corporations Code.

SEC. 4. Section 708.310 of the Code of Civil Procedure is amended to read:

708.310. If a money judgment is rendered against a partner or member but not against the partnership or limited liability company, the judgment debtor's interest in the partnership or limited liability company may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to Section 15673, 16504, or ~~17302~~ *17705.03* of the Corporations Code.

SEC. 5. Section 171.03 of the Corporations Code is amended to read:

171.03. "Foreign limited liability company" means a foreign limited liability company as defined in subdivision ~~(q)~~ *(j)* of Section ~~17001~~ *17701.02*.

SEC. 6. Section 171.3 of the Corporations Code is amended to read:

171.3. "Limited liability company" means a limited liability company as defined in subdivision ~~(t)~~ *(k)* of Section ~~17001~~ *17701.02*.

SEC. 7. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

1 (1) In a merger in which a domestic corporation not organized
2 under this division or a domestic other business entity is a party,
3 it is authorized by the laws under which it is organized to effect
4 the merger.

5 (2) In a merger in which a foreign corporation is a party, it is
6 authorized by the laws under which it is organized to effect the
7 merger.

8 (3) In a merger in which a foreign other business entity is a
9 party, it is authorized by the laws under which it is organized to
10 effect the merger.

11 (b) Each corporation and each other party that desires to merge
12 shall approve, and shall be a party to, an agreement of merger.
13 Other persons, including a parent party (Section 1200), may be
14 parties to the agreement of merger. The board of each corporation
15 that desires to merge and, if required, the shareholders shall
16 approve the agreement of merger. The agreement of merger shall
17 be approved on behalf of each party by those persons required to
18 approve the merger by the laws under which it is organized. The
19 agreement of merger shall state:

20 (1) The terms and conditions of the merger.

21 (2) The name and place of incorporation or organization of each
22 party to the merger and the identity of the surviving party.

23 (3) The amendments, if any, subject to Sections 900 and 907,
24 to the articles of the surviving corporation, if applicable, to be
25 effected by the merger. If any amendment changes the name of
26 the surviving corporation, if applicable, the new name may be,
27 subject to subdivision (b) of Section 201, the same as or similar
28 to the name of a disappearing party to the merger.

29 (4) The manner of converting the shares of each constituent
30 corporation into shares, interests, or other securities of the surviving
31 party. If any shares of any constituent corporation are not to be
32 converted solely into shares, interests or other securities of the
33 surviving party, the agreement of merger shall state (i) the cash,
34 rights, securities, or other property which the holders of those
35 shares are to receive in exchange for the shares, which cash, rights,
36 securities, or other property may be in addition to or in lieu of
37 shares, interests or other securities of the surviving party, or (ii)
38 that the shares are canceled without consideration.

39 (5) Any other details or provisions required by the laws under
40 which any party to the merger is organized, including, if a public

benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or if an unincorporated association is a party to the merger, Section 18370, or, if a domestic limited partnership is a party to the merger, Section 15911.12, or, if a domestic partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section ~~17551~~ 17710.12.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the unredeemable common shares of a constituent corporation may be converted only into unredeemable common shares of a surviving corporation or a parent party (Section 1200) or unredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

1 (e) The board of a constituent corporation may, in its discretion,
2 abandon a merger, subject to the contractual rights, if any, of third
3 parties, including other parties to the agreement of merger, without
4 further approval by the outstanding shares (Section 152), at any
5 time before the merger is effective.

6 (f) Each constituent corporation shall sign the agreement of
7 merger by its chairperson of the board, president or a vice president
8 and also by its secretary or an assistant secretary acting on behalf
9 of their respective corporations.

10 (g) (1) If the surviving party is a corporation or a foreign
11 corporation, or if a flexible purpose corporation (Section 171.08),
12 a public benefit corporation (Section 5060), a mutual benefit
13 corporation (Section 5059), a religious corporation (Section 5061),
14 or a corporation organized under the Consumer Cooperative
15 Corporation Law (Section 12200) is a party to the merger, after
16 required approvals of the merger by each constituent corporation
17 through approval of the board (Section 151) and any approval of
18 the outstanding shares (Section 152) required by Chapter 12
19 (commencing with Section 1200) and by the other parties to the
20 merger, the surviving party shall file a copy of the agreement of
21 merger with an officers' certificate of each constituent domestic
22 and foreign corporation attached stating the total number of
23 outstanding shares or membership interests of each class entitled
24 to vote on the merger (and identifying any other person or persons
25 whose approval is required), that the agreement of merger in the
26 form attached or its principal terms, as required, were approved
27 by that corporation by a vote of a number of shares or membership
28 interests of each class that equaled or exceeded the vote required,
29 specifying each class entitled to vote and the percentage vote
30 required of each class and, if applicable, by that other person or
31 persons whose approval is required, or that the merger agreement
32 was entitled to be and was approved by the board alone (as
33 provided in Section 1201, in the case of corporations subject to
34 that section). If equity securities of a parent party (Section 1200)
35 are to be issued in the merger, the officers' certificate of that
36 controlled party shall state either that no vote of the shareholders
37 of the parent party was required or that the required vote was
38 obtained. In lieu of an officers' certificate, a certificate of merger,
39 on a form prescribed by the Secretary of State, shall be filed for
40 each constituent other business entity. The certificate of merger

1 shall be executed and acknowledged by each domestic constituent
2 limited liability company by all managers of the limited liability
3 company (unless a lesser number is specified in its articles of
4 organization or operating agreement) and by each domestic
5 constituent limited partnership by all general partners (unless a
6 lesser number is provided in its certificate of limited partnership
7 or partnership agreement) and by each domestic constituent general
8 partnership by two partners (unless a lesser number is provided in
9 its partnership agreement) and by each foreign constituent limited
10 liability company by one or more managers and by each foreign
11 constituent general partnership or foreign constituent limited
12 partnership by one or more general partners, and by each
13 constituent reciprocal insurer by the chairperson of the board,
14 president, or vice president, and by the secretary or assistant
15 secretary, or, if a constituent reciprocal insurer has not appointed
16 those officers, by the chairperson of the board, president, or vice
17 president, and by the secretary or assistant secretary of the
18 constituent reciprocal insurer's attorney-in-fact, and by each other
19 party to the merger by those persons required or authorized to
20 execute the certificate of merger by the laws under which that party
21 is organized, specifying for that party the provision of law or other
22 basis for the authority of the signing persons. The certificate of
23 merger shall set forth, if a vote of the shareholders, members,
24 partners, or other holders of interests of the constituent other
25 business entity was required, a statement setting forth the total
26 number of outstanding interests of each class entitled to vote on
27 the merger and that the agreement of merger in the form attached
28 or its principal terms, as required, were approved by a vote of the
29 number of interests of each class that equaled or exceeded the vote
30 required, specifying each class entitled to vote and the percentage
31 vote required of each class, and any other information required to
32 be set forth under the laws under which the constituent other
33 business entity is organized, including, if a domestic limited
34 partnership is a party to the merger, subdivision (a) of Section
35 15911.14, if a domestic partnership is a party to the merger,
36 subdivision (b) of Section 16915, and, if a domestic limited liability
37 company is a party to the merger, subdivision (a) of Section ~~17552~~
38 *17710.04*. The certificate of merger for each constituent foreign
39 other business entity, if any, shall also set forth the statutory or
40 other basis under which that foreign other business entity is

1 authorized by the laws under which it is organized to effect the
2 merger. The merger and any amendment of the articles of the
3 surviving corporation, if applicable, contained in the agreement
4 of merger shall be effective upon filing of the agreement of merger
5 with an officer's certificate of each constituent domestic and
6 foreign corporation and a certificate of merger for each constituent
7 other business entity, subject to subdivision (c) of Section 110 and
8 subject to the provisions of subdivision (j), and the several parties
9 thereto shall be one entity. If a domestic reciprocal insurer
10 organized after 1974 to provide medical malpractice insurance is
11 a party to the merger, the agreement of merger or certificate of
12 merger shall not be filed until there has been filed the certificate
13 issued by the Insurance Commissioner approving the merger
14 pursuant to Section 1555 of the Insurance Code. The Secretary of
15 State may certify a copy of the agreement of merger separate from
16 the officers' certificates and certificates of merger attached thereto.

17 (2) If the surviving entity is an other business entity, and no
18 public benefit corporation (Section 5060), mutual benefit
19 corporation (Section 5059), religious corporation (Section 5061),
20 or corporation organized under the Consumer Cooperative
21 Corporation Law (Section 12200) is a party to the merger, after
22 required approvals of the merger by each constituent corporation
23 through approval of the board (Section 151) and any approval of
24 the outstanding shares (Section 152) required by Chapter 12
25 (commencing with Section 1200) and by the other parties to the
26 merger, the parties to the merger shall file a certificate of merger
27 in the office of, and on a form prescribed by, the Secretary of State.
28 The certificate of merger shall be executed and acknowledged by
29 each constituent domestic and foreign corporation by its
30 chairperson of the board, president or a vice president and also by
31 its secretary or an assistant secretary and by each domestic
32 constituent limited liability company by all managers of the limited
33 liability company (unless a lesser number is specified in its articles
34 of organization or operating agreement) and by each domestic
35 constituent limited partnership by all general partners (unless a
36 lesser number is provided in its certificate of limited partnership
37 or partnership agreement) and by each domestic constituent general
38 partnership by two partners (unless a lesser number is provided in
39 its partnership agreement) and by each foreign constituent limited
40 liability company by one or more managers and by each foreign

1 constituent general partnership or foreign constituent limited
2 partnership by one or more general partners, and by each
3 constituent reciprocal insurer by the chairperson of the board,
4 president, or vice president, and by the secretary or assistant
5 secretary, or, if a constituent reciprocal insurer has not appointed
6 those officers, by the chairperson of the board, president, or vice
7 president, and by the secretary or assistant secretary of the
8 constituent reciprocal insurer's attorney-in-fact. The certificate of
9 merger shall be signed by each other party to the merger by those
10 persons required or authorized to execute the certificate of merger
11 by the laws under which that party is organized, specifying for
12 that party the provision of law or other basis for the authority of
13 the signing persons. The certificate of merger shall set forth all of
14 the following:

15 (A) The name, place of incorporation or organization, and the
16 Secretary of State's file number, if any, of each party to the merger,
17 separately identifying the disappearing parties and the surviving
18 party.

19 (B) If the approval of the outstanding shares of a constituent
20 corporation was required by Chapter 12 (commencing with Section
21 1200), a statement setting forth the total number of outstanding
22 shares of each class entitled to vote on the merger and that the
23 principal terms of the agreement of merger were approved by a
24 vote of the number of shares of each class entitled to vote and the
25 percentage vote required of each class.

26 (C) The future effective date or time, not more than 90 days
27 subsequent to the date of filing of the merger, if the merger is not
28 to be effective upon the filing of the certificate of merger with the
29 office of the Secretary of State.

30 (D) A statement, by each party to the merger which is a domestic
31 corporation not organized under this division, a foreign corporation,
32 or an other business entity, of the statutory or other basis under
33 which that party is authorized by the laws under which it is
34 organized to effect the merger.

35 (E) Any other information required to be stated in the certificate
36 of merger by the laws under which each party to the merger is
37 organized, including, if a domestic limited liability company is a
38 party to the merger, subdivision (a) of Section ~~17552~~ 17710.14, if
39 a domestic partnership is a party to the merger, subdivision (b) of

1 Section 16915, and, if a domestic limited partnership is a party to
2 the merger, subdivision (a) of Section 15911.14.

3 (F) Any other details or provisions that may be desired.

4 Unless a future effective date or time is provided in a certificate
5 of merger, in which event the merger shall be effective at that
6 future effective date or time, a merger shall be effective upon the
7 filing of the certificate of merger in the office of the Secretary of
8 State and the several parties thereto shall be one entity. The
9 surviving other business entity shall keep a copy of the agreement
10 of merger at its principal place of business which, for purposes of
11 this subdivision, shall be the office referred to in Section ~~17057~~
12 ~~17710.13~~ if a domestic limited liability company, at the business
13 address specified in paragraph (5) of subdivision (a) of Section
14 ~~17552~~ 17710.14 if a foreign limited liability company, at the office
15 referred to in subdivision (a) of Section 16403 if a domestic general
16 partnership, at the business address specified in subdivision (f) of
17 Section 16911 if a foreign partnership, at the office referred to in
18 subdivision (a) of Section 15901.14 if a domestic limited
19 partnership, or at the business address specified in paragraph (3)
20 of subdivision (a) of Section 15909.02 if a foreign limited
21 partnership. Upon the request of a holder of equity securities of a
22 party to the merger, a person with authority to do so on behalf of
23 the surviving other business entity shall promptly deliver to that
24 holder, a copy of the agreement of merger. A waiver by that holder
25 of the rights provided in the foregoing sentence shall be
26 unenforceable. If a domestic reciprocal insurer organized after
27 1974 to provide medical malpractice insurance is a party to the
28 merger the agreement of merger or certificate of merger shall not
29 be filed until there has been filed the certificate issued by the
30 Insurance Commissioner approving the merger in accordance with
31 Section 1555 of the Insurance Code.

32 (h) (1) A copy of an agreement of merger certified on or after
33 the effective date by an official having custody thereof has the
34 same force in evidence as the original and, except as against the
35 state, is conclusive evidence of the performance of all conditions
36 precedent to the merger, the existence on the effective date of the
37 surviving party to the merger and the performance of the conditions
38 necessary to the adoption of any amendment to the articles, if
39 applicable, contained in the agreement of merger.

1 (2) For all purposes for a merger in which the surviving entity
2 is a domestic other business entity and the filing of a certificate of
3 merger is required by paragraph (2) of subdivision (g), a copy of
4 the certificate of merger duly certified by the Secretary of State is
5 conclusive evidence of the merger of the constituent corporations,
6 either by themselves or together with the other parties to the
7 merger, into the surviving other business entity.

8 (i) (1) Upon a merger pursuant to this section, the separate
9 existences of the disappearing parties to the merger cease and the
10 surviving party to the merger shall succeed, without other transfer,
11 to all the rights and property of each of the disappearing parties to
12 the merger and shall be subject to all the debts and liabilities of
13 each in the same manner as if the surviving party to the merger
14 had itself incurred them.

15 (2) All rights of creditors and all liens upon the property of each
16 of the constituent corporations and other parties to the merger shall
17 be preserved unimpaired, provided that those liens upon property
18 of a disappearing party shall be limited to the property affected
19 thereby immediately prior to the time the merger is effective.

20 (3) Any action or proceeding pending by or against any
21 disappearing corporation or disappearing party to the merger may
22 be prosecuted to judgment, which shall bind the surviving party,
23 or the surviving party may be proceeded against or substituted in
24 its place.

25 (4) If a limited partnership or a general partnership is a party to
26 the merger, nothing in this section is intended to affect the liability
27 a general partner of a disappearing limited partnership or general
28 partnership may have in connection with the debts and liabilities
29 of the disappearing limited partnership or general partnership
30 existing prior to the time the merger is effective.

31 (j) (1) The merger of domestic corporations with foreign
32 corporations or foreign other business entities in a merger in which
33 one or more other business entities is a party shall comply with
34 subdivision (a) and this subdivision.

35 (2) If the surviving party is a domestic corporation or domestic
36 other business entity, the merger proceedings with respect to that
37 party and any domestic disappearing corporation shall conform to
38 the provisions of this section. If the surviving party is a foreign
39 corporation or foreign other business entity, then, subject to the
40 requirements of subdivision (c), and of Section 407 and Chapter

1 12 (commencing with Section 1200) and Chapter 13 (commencing
2 with Section 1300), and, if applicable, corresponding provisions
3 of the Nonprofit Corporation Law or the Consumer Cooperative
4 Corporation Law, with respect to any domestic constituent
5 corporations, ~~Chapter 13 Article 11~~ (commencing with Section
6 ~~17600~~ 17711.01) of Title ~~2.5~~ 2.6 with respect to any domestic
7 constituent limited liability companies, Article 6 (commencing
8 with Section 16601) of Chapter 5 of Title 2 with respect to any
9 domestic constituent general partnerships, and Article 11.5
10 (commencing with Section 15911.20) of Chapter 5.5 of Title 2
11 with respect to any domestic constituent limited partnerships, the
12 merger proceedings may be in accordance with the laws of the
13 state or place of incorporation or organization of the surviving
14 party.

15 (3) If the surviving party is a domestic corporation or domestic
16 other business entity, the certificate of merger or the agreement of
17 merger with attachments shall be filed as provided in subdivision
18 (g) and thereupon, subject to subdivision (c) of Section 110 or
19 paragraph (2) of subdivision (g), as is applicable, the merger shall
20 be effective as to each domestic constituent corporation and
21 domestic constituent other business entity.

22 (4) If the surviving party is a foreign corporation or foreign
23 other business entity, the merger shall become effective in
24 accordance with the law of the jurisdiction in which the surviving
25 party is organized, but, except as provided in paragraph (5), the
26 merger shall be effective as to any domestic disappearing
27 corporation as of the time of effectiveness in the foreign jurisdiction
28 upon the filing in this state of a copy of the agreement of merger
29 with an officers' certificate of each constituent foreign and
30 domestic corporation and a certificate of merger of each constituent
31 other business entity attached, which officers' certificates and
32 certificates of merger shall conform to the requirements of
33 paragraph (1) of subdivision (g). If one or more domestic other
34 business entities is a disappearing party in a merger pursuant to
35 this subdivision in which a foreign other business entity is the
36 surviving entity, a certificate of merger required by the laws under
37 which that domestic other business entity is organized, including
38 subdivision (a) of Section 15911.14, subdivision (b) of Section
39 16915, or subdivision (a) of Section ~~17552~~ 17710.14, as is

1 applicable, shall also be filed at the same time as the filing of the
2 agreement of merger.

3 (5) If the date of the filing in this state pursuant to this
4 subdivision is more than six months after the time of the
5 effectiveness in the foreign jurisdiction, or if the powers of a
6 domestic disappearing corporation are suspended at the time of
7 effectiveness in the foreign jurisdiction, the merger shall be
8 effective as to the domestic disappearing corporation as of the date
9 of filing in this state.

10 (6) In a merger described in paragraph (3) or (4), each foreign
11 disappearing corporation that is qualified for the transaction of
12 intrastate business shall by virtue of the filing pursuant to this
13 subdivision, subject to subdivision (c) of Section 110, automatically
14 surrender its right to transact intrastate business in this state. The
15 filing of the agreement of merger or certificate of merger, as is
16 applicable, pursuant to this subdivision, by a disappearing foreign
17 other business entity registered for the transaction of intrastate
18 business in this state shall, by virtue of that filing, subject to
19 subdivision (c) of Section 110, automatically cancels the
20 registration for that foreign other business entity, without the
21 necessity of the filing of a certificate of cancellation.

22 *SEC. 8. Section 1152 of the Corporations Code is amended to*
23 *read:*

24 1152. (a) A corporation that desires to convert to a domestic
25 other business entity shall approve a plan of conversion. The plan
26 of conversion shall state all of the following:

27 (1) The terms and conditions of the conversion.

28 (2) The jurisdiction of the organization of the converted entity
29 and of the converting corporation and the name of the converted
30 entity after conversion.

31 (3) The manner of converting the shares of each of the
32 shareholders of the converting corporation into securities of, or
33 interests in, the converted entity.

34 (4) The provisions of the governing documents for the converted
35 entity, including the partnership agreement or limited liability
36 company articles of organization and operating agreement, to
37 which the holders of interests in the converted entity are to be
38 bound.

1 (5) Any other details or provisions that are required by the laws
2 under which the converted entity is organized, or that are desired
3 by the converting corporation.

4 (b) The plan of conversion shall be approved by the board of
5 the converting corporation (Section 151), and the principal terms
6 of the plan of the conversion shall be approved by the outstanding
7 shares (Section 152) of each class of the converting corporation.
8 The approval of the outstanding shares may be given before or
9 after approval by the board. Notwithstanding the foregoing, if a
10 converting corporation is a close corporation, the conversion shall
11 be approved by the affirmative vote of at least two-thirds of each
12 class, or a greater vote if required in the articles, of outstanding
13 shares (Section 152) of that converting corporation; provided,
14 however, that the articles may provide for a lesser vote, but not
15 less than a majority of the outstanding shares of each class.

16 (c) If the corporation is converting into a general or limited
17 partnership or into a limited liability company, then in addition to
18 the approval of the shareholders set forth in subdivision (b), the
19 plan of conversion shall be approved by each shareholder who will
20 become a general partner or manager, as applicable, of the
21 converted entity pursuant to the plan of conversion unless the
22 shareholders have dissenters' rights pursuant to Section 1159 and
23 Chapter 13 (commencing with Section 1300).

24 (d) If the corporation is converting into a flexible purpose
25 corporation, both of the following shall apply:

26 (1) Notwithstanding subdivision (b), the plan of conversion
27 shall be approved by the affirmative vote of at least two-thirds of
28 each class, or a greater vote if required in the articles, of
29 outstanding shares (Section 152) of that converting corporation.

30 (2) The shareholders of the converting corporation shall have
31 all of the rights under Chapter 13 (commencing with Section 1300)
32 of the shareholders of a corporation involved in a reorganization
33 requiring the approval of its outstanding shares (Section 152), and
34 the converting corporation shall have all of the obligations under
35 Chapter 13 (commencing with Section 1300) of a corporation
36 involved in a reorganization, without regard to whether the
37 conversion constitutes a reorganization requiring a shareholder
38 vote under Chapter 12 (commencing with Section 1200).

39 (e) Upon the effectiveness of the conversion, all shareholders
40 of the converting corporation, except those that exercise dissenters'

1 rights as provided in Section 1159 and Chapter 13 (commencing
2 with Section 1300), shall be deemed parties to any agreement or
3 agreements constituting the governing documents for the converted
4 entity adopted as part of the plan of conversion, irrespective of
5 whether or not a shareholder has executed the plan of conversion
6 or those governing documents for the converted entity. Any
7 adoption of governing documents made pursuant thereto shall be
8 effective at the effective time or date of the conversion.

9 (f) Notwithstanding its prior approval by the board and the
10 outstanding shares or either of them, a plan of conversion may be
11 amended before the conversion takes effect if the amendment is
12 approved by the board and, if it changes any of the principal terms
13 of the plan of conversion, by the shareholders of the converting
14 corporation in the same manner and to the same extent as was
15 required for approval of the original plan of conversion.

16 (g) A plan of conversion may be abandoned by the board of a
17 converting corporation, or by the shareholders of a converting
18 corporation if the abandonment is approved by the outstanding
19 shares, in each case in the same manner as required for approval
20 of the plan of conversion, subject to the contractual rights of third
21 parties, at any time before the conversion is effective.

22 (h) The converted entity shall keep the plan of conversion at
23 (1) the principal place of business of the converted entity if the
24 converted entity is a domestic partnership or (2) at the office at
25 which records are to be kept under Section 15614 or 15901.11 if
26 the converted entity is a domestic limited partnership or at the
27 office at which records are to be kept under Section ~~17057~~
28 ~~17701.13~~ if the converted entity is a domestic limited liability
29 company. Upon the request of a shareholder of a converting
30 corporation, the authorized person on behalf of the converted entity
31 shall promptly deliver to the shareholder, at the expense of the
32 converted entity, a copy of the plan of conversion. A waiver by a
33 shareholder of the rights provided in this subdivision shall be
34 unenforceable.

35 *SEC. 9. Section 1157 of the Corporations Code is amended to*
36 *read:*

37 1157. (a) An other business entity or a foreign other business
38 entity or a foreign corporation may be converted into a corporation
39 pursuant to this chapter only if the converting entity is authorized
40 by the laws under which it is organized to effect the conversion.

1 (b) An other business entity or a foreign other business entity
2 or a foreign corporation that desires to convert into a corporation
3 shall approve a plan of conversion or other instrument as is required
4 to be approved to effect the conversion pursuant to the laws under
5 which that entity is organized.

6 (c) The conversion of an other business entity or a foreign other
7 business entity or a foreign corporation shall be approved by the
8 number or percentage of the partners, members, shareholders, or
9 other holders of interest of the converting entity that is required
10 by the laws under which that entity is organized, or a greater or
11 lesser percentage as may be set forth in the converting entity's
12 partnership agreement, articles of organization, operating
13 agreement, articles of incorporation, or other governing document
14 in accordance with applicable laws.

15 (d) The conversion by an other business entity or a foreign other
16 business entity or a foreign corporation shall be effective under
17 this chapter upon the filing with the Secretary of State of the
18 articles of incorporation of the converted corporation, containing
19 a statement of conversion that complies with subdivision (e).

20 (e) A statement of conversion of an entity converting into a
21 corporation pursuant to this chapter shall set forth all of the
22 following:

23 (1) The name, form, and jurisdiction of organization of the
24 converting entity.

25 (2) The Secretary of State's file number, if any, of the converting
26 entity.

27 (3) If the converting entity is a foreign other business entity or
28 a foreign corporation, the statement of conversion shall contain
29 the following:

30 (A) A statement that the converting entity is authorized to effect
31 the conversion by the laws under which it is organized.

32 (B) A statement that the converting entity has approved a plan
33 of conversion or other instrument as is required to be approved to
34 effect the conversion pursuant to the laws under which the
35 converting entity is organized.

36 (C) A statement that the conversion has been approved by the
37 number or percentage of the partners, members, shareholders, or
38 other holders of interest of the converting entity that is required
39 by the laws under which that entity is organized, or a greater or
40 lesser percentage as may be set forth in the converting entity's

1 partnership agreement, articles of organization, operating
2 agreement, articles of incorporation, or other governing document
3 in accordance with applicable laws.

4 (f) The filing with the Secretary of State of articles of
5 incorporation containing a statement pursuant to subdivision (e)
6 shall have the effect of the filing of a certificate of cancellation by
7 a converting foreign limited liability company or foreign limited
8 partnership, and no converting foreign limited liability company
9 or foreign limited partnership that has made the filing is required
10 to file a certificate of cancellation under Section 15696, 15909.07,
11 or ~~17455~~ 17708.06 as a result of that conversion. If a converting
12 entity is a foreign corporation qualified to transact business in this
13 state, the foreign corporation shall, by virtue of the filing,
14 automatically surrender its right to transact intrastate business.

15 *SEC. 10. Section 2113 of the Corporations Code is amended*
16 *to read:*

17 2113. (a) The filing of an agreement of merger of a foreign
18 disappearing corporation qualified to transact intrastate business
19 in this state pursuant to Section 1103, or the filing pursuant to
20 subdivision (d) of Section 1108 of an agreement, certificate, or
21 other document as to a merger that includes a disappearing foreign
22 corporation qualified to transact intrastate business, or the filing
23 of a certificate of ownership as to a foreign subsidiary corporation
24 qualified to transact intrastate business in this state pursuant to
25 Section 1110, or the filing by a foreign corporation qualified to
26 transact intrastate business in this state of an organizational
27 document containing a statement of conversion pursuant to Section
28 15677.8, 15911.08, 16908, or ~~17540.8~~ 17710.08, constitutes the
29 surrender by the foreign corporation of its right to engage in
30 intrastate business within this state.

31 (b) With respect to corporations for which documents have not
32 been filed as provided in subdivision (a), a certificate of surrender
33 as prescribed by Section 2112 shall be filed by a foreign
34 corporation qualified to transact intrastate business upon its merger
35 into another foreign corporation.

36 (c) In lieu of a signature as prescribed by Section 2112, a
37 certificate of surrender pursuant to subdivision (b) for a merged
38 foreign corporation may be signed in the name of the surviving
39 corporation by an officer thereof. In that case, the certificate of
40 surrender shall be accompanied by a certificate of an authorized

1 public official of the state or place of incorporation of the merged
2 foreign corporation stating that the corporation has been merged
3 into another foreign corporation and setting forth the name and
4 state or place of incorporation of the surviving foreign corporation.

5 *SEC. 11. Section 6019.1 of the Corporations Code is amended*
6 *to read:*

7 6019.1. (a) Subject to the provisions of Sections 6010 and
8 9640, any one or more corporations may merge with one or more
9 other business entities (Section 5063.5). One or more other
10 domestic corporations and foreign corporations (Section 5053)
11 may be parties to the merger. Notwithstanding the provisions of
12 this section, such a merger may be effected only if:

13 (1) In a merger in which a domestic corporation or domestic
14 other business entity is a party, it is authorized by the laws under
15 which it is organized to effect the merger.

16 (2) In a merger in which a foreign corporation is a party, it is
17 authorized by the laws under which it is organized to effect the
18 merger.

19 (3) In a merger in which a foreign other business entity is a
20 party, it is authorized by the laws under which it is organized to
21 effect the merger.

22 (b) Each corporation and each other party which desires to merge
23 shall approve an agreement of merger. The board and the members
24 (Section 5034) of each corporation which desires to merge, and
25 each other person or persons, if any, whose approval of an
26 amendment of the articles of that corporation is required by the
27 articles or bylaws shall approve the agreement of merger. The
28 agreement of merger shall be approved on behalf of each other
29 party by those persons authorized or required to approve the merger
30 by the laws under which it is organized. The parties desiring to
31 merge shall be parties to the agreement of merger and other
32 persons, including a parent party (Section 5064.5), may be parties
33 to the agreement of merger. The agreement of merger shall state
34 all of the following:

35 (1) The terms and conditions of the merger.

36 (2) The name and place of incorporation or organization of each
37 party and the identity of the surviving party.

38 (3) The amendments, if any, subject to Sections 5810 and 5816,
39 to the articles of the surviving corporation, if applicable, to be
40 effected by the merger. The name of the surviving corporation

1 may be, subject to subdivision (b) of Section 5122 and subdivision
2 (b) of Section 9122, the same as, or similar to, the name of a
3 disappearing party to the merger.

4 (4) The manner, if any, of converting the memberships of each
5 of the constituent corporations into shares, memberships, interests,
6 or other securities of the surviving party; and, if any memberships
7 of any of the constituent corporations are not to be converted solely
8 into shares, memberships, interests, or other securities of the
9 surviving party, the cash, rights, securities, or other property which
10 the holders of those memberships are to receive in exchange for
11 the memberships, which cash, rights, securities, or other property
12 may be in addition to, or in lieu of, shares, memberships, interests,
13 or other securities of the surviving corporation or surviving other
14 business entity.

15 (5) Any other details or provisions required by the laws under
16 which any party to the merger is organized, including, if an
17 unincorporated association is a party to the merger, Section 18370,
18 or if a domestic limited partnership is a party to the merger,
19 subdivision (a) of Section 15678.2 or 15911.12, if a domestic
20 general partnership is a party to the merger, subdivision (a) of
21 Section 16911, or, if a domestic limited liability company is a party
22 to the merger, subdivision (a) of Section ~~17554~~ 17710.12.

23 (6) Any other details or provisions as are desired.

24 (c) Notwithstanding its prior approval, an agreement of merger
25 may be amended prior to the filing of the agreement of merger if
26 the amendment is approved by each constituent corporation in the
27 same manner as the original agreement of merger. If the agreement
28 of merger as so amended and approved is also approved by each
29 of the other parties to the agreement of merger, as so amended it
30 shall then constitute the agreement of merger.

31 (d) The board of a constituent corporation may, in its discretion,
32 abandon a merger, subject to the contractual rights, if any, of third
33 parties, including other parties to the agreement of merger, without
34 further approval by the members (Section 5034) or other persons,
35 at any time before the merger is effective.

36 (e) Each constituent corporation shall sign the agreement of
37 merger by its chairperson of the board, president or a vice president,
38 and also by its secretary or an assistant secretary acting on behalf
39 of their respective corporations.

1 (f) After required approvals of the merger by each constituent
2 corporation and each other party to the merger, the surviving party
3 shall file a copy of the agreement of merger with an officers'
4 certificate of each constituent domestic and foreign corporation
5 attached stating the total number of outstanding shares or
6 membership interests of each class, if any, entitled to vote on the
7 merger (and identifying any other person or persons whose
8 approval is required), that the agreement of merger in the form
9 attached or its principal terms, as required, were approved by that
10 corporation by a vote of a number of shares or membership
11 interests of each class entitled to vote, if any, which equaled or
12 exceeded the vote required, specifying each class entitled to vote
13 and the percentage vote required of each class, and, if applicable,
14 by that other person or persons whose approval is required.

15 If equity securities of a parent party (Section 5064.5) are to be
16 issued in the merger, the officers' certificate or certificate of merger
17 of the controlled party shall state either that no vote of the
18 shareholders of the parent party was required or that the required
19 vote was obtained. The merger and any amendment of the articles
20 of the surviving corporation, if applicable, contained in the
21 agreement of merger shall be effective upon the filing of the
22 agreement of merger, subject to the provisions of subdivision (h).
23 If a domestic reciprocal insurer organized after 1974 to provide
24 medical malpractice insurance is a party to the merger, the
25 agreement of merger or certificate of merger shall not be filed until
26 there has been filed the certificate issued by the Insurance
27 Commissioner approving the merger pursuant to Section 1555 of
28 the Insurance Code.

29 In lieu of an officers' certificate, a certificate of merger, on a
30 form prescribed by the Secretary of State, shall be filed for each
31 constituent other business entity. The certificate of merger shall
32 be executed and acknowledged by each domestic constituent
33 limited liability company by all of the managers of the limited
34 liability company (unless a lesser number is specified in its articles
35 of organization or operating agreement) and by each domestic
36 constituent limited partnership by all general partners (unless a
37 lesser number is provided in its certificate of limited partnership
38 or partnership agreement) and by each domestic constituent general
39 partnership by two partners (unless a lesser number is provided in
40 its partnership agreement) and by each foreign constituent limited

1 liability company by one or more managers and by each foreign
2 constituent general partnership or foreign constituent limited
3 partnership by one or more general partners, and by each
4 constituent reciprocal insurer by the chairperson of the board,
5 president, or vice president, and also by the secretary or assistant
6 secretary, or, if a constituent reciprocal insurer has not appointed
7 such officers, by the chairperson of the board, president, or vice
8 president, and also by the secretary or assistant secretary of the
9 constituent reciprocal insurer's attorney-in-fact, and by each other
10 party to the merger by those persons required or authorized to
11 execute the certificate of merger by the laws under which that party
12 is organized, specifying for such party the provision of law or other
13 basis for the authority of the signing persons.

14 The certificate of merger shall set forth, if a vote of the
15 shareholders, members, partners, or other holders of interests of a
16 constituent other business entity was required, a statement setting
17 forth the total number of outstanding interests of each class entitled
18 to vote on the merger and that the agreement of merger or its
19 principal terms, as required, were approved by a vote of the number
20 of interests of each class which equaled or exceeded the vote
21 required, specifying each class entitled to vote and the percentage
22 vote required of each class, and any other information required to
23 be set forth under the laws under which the constituent other
24 business entity is organized, including, if a domestic limited
25 partnership is a party to the merger, subdivision (a) of Section
26 15678.4 or 15911.14, if a domestic general partnership is a party
27 to the merger, subdivision (b) of Section 16915, and, if a domestic
28 limited liability company is a party to the merger, subdivision (a)
29 of Section ~~17552~~ 17710.14. The certificate of merger for each
30 constituent foreign other business entity, if any, shall also set forth
31 the statutory or other basis under which that foreign other business
32 entity is authorized by the laws under which it is organized to
33 effect the merger.

34 The Secretary of State may certify a copy of the agreement of
35 merger separate from the officers' certificates and certificates of
36 merger attached thereto.

37 (g) A copy of an agreement of merger certified on or after the
38 effective date by an official having custody thereof has the same
39 force in evidence as the original and, except as against the state,
40 is conclusive evidence of the performance of all conditions

1 precedent to the merger, the existence on the effective date of the
2 surviving party to the merger, the performance of the conditions
3 necessary to the adoption of any amendment to the articles, if
4 applicable, contained in the agreement of merger, and the merger
5 of the constituent corporations, either by themselves or together
6 with other constituent parties, into the surviving party to the
7 merger.

8 (h) (1) The merger of domestic corporations with foreign
9 corporations or foreign other business entities in a merger in which
10 one or more other business entities is a party shall comply with
11 subdivisions (a) and (f) and this subdivision.

12 (2) Subject to subdivision (c) of Section 5008 and paragraph
13 (3), the merger shall be effective as to each domestic constituent
14 corporation and domestic constituent other business entity upon
15 filing of the agreement of merger with attachments as provided in
16 subdivision (f).

17 (3) If the surviving party is a foreign corporation or foreign
18 other business entity, except as provided in paragraph (4), the
19 merger shall be effective as to any domestic disappearing
20 corporation as of the time of effectiveness in the foreign jurisdiction
21 upon the filing in this state of a copy of the agreement of merger
22 with an officers' certificate of the surviving foreign corporation
23 and of each constituent foreign and domestic corporation and a
24 certificate of merger of each constituent other business entity
25 attached, which officers' certificates and certificates of merger
26 shall conform to the requirements of subdivision (f).

27 If one or more domestic other business entities is a disappearing
28 party in a merger pursuant to this subdivision in which a foreign
29 other business entity is the surviving entity, a certificate of merger
30 required by the laws under which each domestic other business
31 entity is organized, including subdivision (a) of Section 15678.4
32 or 15911.14, subdivision (b) of Section 16915, or subdivision (a)
33 of Section ~~17552~~ 17710.14, if applicable, shall also be filed at the
34 same time as the filing of the agreement of merger.

35 (4) If the date of the filing in this state pursuant to this
36 subdivision is more than six months after the time of the
37 effectiveness in the foreign jurisdiction, or if the powers of a
38 domestic disappearing corporation are suspended at the time of
39 effectiveness in the foreign jurisdiction, the merger shall be

1 effective as to the domestic disappearing corporation as of the date
2 of filing in this state.

3 (5) Each foreign disappearing corporation that is qualified for
4 the transaction of intrastate business shall automatically by the
5 filing pursuant to subdivision (f) surrender its right to transact
6 intrastate business as of the date of filing in this state or, if later,
7 the effective date of the merger. With respect to each foreign
8 disappearing other business entity previously registered for the
9 transaction of intrastate business in this state, the filing of the
10 agreement of merger pursuant to subdivision (f) automatically has
11 the effect of a cancellation of registration for that foreign other
12 business entity as of the date of filing in this state or, if later, the
13 effective date of the merger, without the necessity of the filing of
14 a certificate of cancellation.

15 *SEC. 12. Section 8019.1 of the Corporations Code is amended*
16 *to read:*

17 8019.1. (a) Subject to the provisions of Section 8010, any one
18 or more corporations may merge with one or more other business
19 entities (Section 5063.5). One or more other domestic corporations,
20 foreign corporations (~~Section~~ (Section 5053), and foreign business
21 corporations (Section 5052) may be parties to the merger.
22 Notwithstanding the provisions of this section, such a merger may
23 be effected only if:

24 (1) In a merger in which a domestic corporation or domestic
25 other business entity is a party, it is authorized by the laws under
26 which it is organized to effect the merger.

27 (2) In a merger in which a foreign corporation or foreign
28 business corporation is a party, it is authorized by the laws under
29 which it is organized to effect the merger.

30 (3) In a merger in which a foreign other business entity is a
31 party, it is authorized by the laws under which it is organized to
32 effect the merger.

33 (b) Each corporation and each other party which desires to merge
34 shall approve an agreement of merger. The board and the members
35 (Section 5034) of each corporation which desires to merge, and
36 each other person or persons, if any, whose approval of an
37 amendment of the articles of that corporation is required by the
38 articles or bylaws shall approve the agreement of merger. The
39 agreement of merger shall be approved on behalf of each other
40 constituent party by those persons authorized or required to approve

1 the merger by the laws under which it is organized. The parties
2 desiring to merge shall be parties to the agreement of merger and
3 other persons, including a parent party (Section 5064.5), may be
4 parties to the agreement of merger. The agreement of merger shall
5 state all of the following:

6 (1) The terms and conditions of the merger.

7 (2) The name and place of incorporation or organization of each
8 party and the identity of the surviving party.

9 (3) The amendments, if any, subject to Sections 7810 and 7816,
10 to the articles of the surviving corporation, if applicable, to be
11 effected by the merger. The name of the surviving corporation
12 may be, subject to subdivisions (b) and (c) of Section 7122, the
13 same as or similar to the name of a disappearing party to the
14 merger.

15 (4) The manner, if any, of converting the memberships or
16 securities of each of the constituent corporations into shares,
17 memberships, interests, or other securities of the surviving party;
18 and, if any memberships or securities of any of the constituent
19 corporations are not to be converted solely into shares,
20 memberships, interests, or other securities of the surviving party,
21 cash, rights, securities, or other property which the holders of those
22 memberships or securities are to receive in exchange for the
23 memberships or securities, which cash, rights, securities, or other
24 property may be in addition to or in lieu of shares, memberships,
25 interests, or other securities of the surviving party.

26 (5) Any other details or provisions required by the laws under
27 which any party to the merger is organized, including, if an
28 unincorporated association is a party to the merger, Section 18370,
29 or if a domestic limited partnership is a party to the merger,
30 subdivision (a) of Section 15678.2 or 15911.12, or, if a domestic
31 general partnership is a party to the merger, subdivision (a) of
32 Section 16911, or, if a domestic limited liability company is a party
33 to the merger, subdivision (a) of Section ~~17551~~ 17710.12.

34 (6) Any other details or provisions as are desired.

35 (c) Each membership of the same class of any constituent
36 corporation (other than the cancellation of memberships held by
37 a party to the merger or its parent or a wholly owned subsidiary
38 of either in another constituent corporation) shall be treated equally
39 with respect to any distribution of cash, property, rights, or
40 securities unless (i) all members of the class consent or (ii) the

1 commissioner has approved the terms and conditions of the
2 transaction and the fairness of those terms pursuant to Section
3 25142.

4 (d) Notwithstanding its prior approval, an agreement of merger
5 may be amended prior to the filing of the agreement of merger if
6 the amendment is approved by each constituent corporation in the
7 same manner as the original agreement of merger. If the agreement
8 of merger as so amended and approved is also approved by each
9 of the other parties to the agreement of merger, as so amended it
10 shall then constitute the agreement of merger.

11 (e) The board of a constituent corporation may, in its discretion,
12 abandon a merger, subject to the contractual rights, if any, of third
13 parties, including other parties to the agreement of merger, without
14 further approval by the members (Section 5034) or other persons,
15 at any time before the merger is effective.

16 (f) Each constituent corporation shall sign the agreement of
17 merger by its chairperson of the board, president, or a vice president
18 and also by its secretary or an assistant secretary acting on behalf
19 of their respective corporations.

20 (g) After required approvals of the merger by each constituent
21 corporation and each other party to the merger, the surviving party
22 shall file a copy of the agreement of merger with an officers'
23 certificate of each constituent domestic corporation, foreign
24 corporation, and foreign business corporation attached stating the
25 total number of outstanding shares or membership interests of each
26 class entitled to vote on the merger (and identifying any other
27 person or persons whose approval is required), that the agreement
28 of merger in the form attached or its principal terms, as required,
29 were approved by that corporation by a vote of a number of shares
30 or membership interests of each class which equaled or exceeded
31 the vote required, specifying each class entitled to vote required
32 of each class, and, if applicable, by such other person or persons
33 whose approval is required.

34 If equity securities of a parent party (Section 5064.5) are to be
35 issued in the merger, the officers' certificate or certificate of merger
36 of the controlled party shall state either that no vote of the
37 shareholders of the parent party was required or that the required
38 vote was obtained. The merger and any amendment of the articles
39 of the surviving corporation, if applicable, contained in the
40 agreement of merger shall be effective upon the filing of the

1 agreement of merger, subject to the provisions of subdivision (i).
2 If a domestic reciprocal insurer organized after 1974 to provide
3 medical malpractice insurance is a party to the merger, the
4 agreement of merger or certificate of merger shall not be filed until
5 there has been filed the certificate issued by the Insurance
6 Commissioner approving the merger pursuant to Section 1555 of
7 the Insurance Code.

8 In lieu of an officers' certificate, a certificate of merger, on a
9 form prescribed by the Secretary of State, shall be filed for each
10 constituent other business entity. The certificate of merger shall
11 be executed and acknowledged by each domestic constituent
12 limited liability company by all of the managers of the limited
13 liability company (unless a lesser number is specified in its articles
14 of organization or operating agreement) and by each domestic
15 constituent limited partnership by all general partners (unless a
16 lesser number is provided in its certificate of limited partnership
17 or partnership agreement) and by each domestic constituent general
18 partnership by two partners (unless a lesser number is provided in
19 its partnership agreement) and by each foreign constituent limited
20 liability company by one or more managers and by each foreign
21 constituent general partnership or foreign constituent limited
22 partnership by one or more general partners, and by each
23 constituent reciprocal insurer by the chairperson of the board,
24 president, or vice president, and by the secretary or assistant
25 secretary, or, if a constituent reciprocal insurer has not appointed
26 such officers, by the chairperson of the board, president, or vice
27 president, and by the secretary or assistant secretary of the
28 constituent reciprocal insurer's attorney-in-fact, and by each other
29 party to the merger by those persons required or authorized to
30 execute the certificate of merger by the laws under which that party
31 is organized, specifying for such party the provision of law or other
32 basis for the authority of the signing persons.

33 The certificate of merger shall set forth, if a vote of the
34 shareholders, members, partners, or other holders of interests of a
35 constituent other business entity was required, a statement setting
36 forth the total number of outstanding interests of each class entitled
37 to vote on the merger and that the principal terms of the agreement
38 of merger were approved by a vote of the number of interests of
39 each class which equaled or exceeded the vote required, specifying
40 each class entitled to vote and the percentage vote required of each

1 class, and any other information required to be set forth under the
2 laws under which the constituent other business entity is organized,
3 including, if a domestic limited partnership is a party to the merger,
4 subdivision (a) of Section 15678.4 or 15911.14, if a domestic
5 general partnership is a party to the merger, subdivision (b) of
6 Section 16915 and, if a domestic limited liability company is a
7 party to the merger, subdivision (a) of Section ~~17552~~ 17710.14.
8 The certificate of merger for each constituent foreign other business
9 entity, if any, shall also set forth the statutory or other basis under
10 which that foreign other business entity is authorized by the laws
11 under which it is organized to effect the merger.

12 The Secretary of State may certify a copy of the agreement of
13 merger separate from the officers' certificates and certificates of
14 merger attached thereto.

15 (h) A copy of an agreement of merger certified on or after the
16 effective date by an official having custody thereof has the same
17 force in evidence as the original and, except as against the state,
18 is conclusive evidence of the performance of all conditions
19 precedent to the merger, the existence on the effective date of the
20 surviving party to the merger, the performance of the conditions
21 necessary to the adoption of any amendment to the articles, if
22 applicable, contained in the agreement of merger, and of the merger
23 of the constituent corporations, either by themselves or together
24 with other constituent parties, into the surviving party to the
25 merger.

26 (i) (1) The merger of domestic corporations with foreign
27 corporations or foreign other business entities in a merger in which
28 one or more other business entities is a party shall comply with
29 subdivisions (a) and (g) and this subdivision.

30 (2) Subject to subdivision (c) of Section 5008 and paragraph
31 (3), the merger shall be effective as to each domestic constituent
32 corporation and domestic constituent other business entity upon
33 filing of the agreement of merger with attachments as provided in
34 subdivision (g).

35 (3) If the surviving party is a foreign corporation or foreign
36 business corporation or foreign other business entity, except as
37 provided in paragraph (4), the merger shall be effective as to any
38 domestic disappearing corporation as of the time of effectiveness
39 in the foreign jurisdiction upon the filing in this state of a copy of
40 the agreement of merger with an officers' certificate of the

1 surviving foreign corporation or foreign business corporation and
2 of each constituent foreign and domestic corporation and a
3 certificate of merger of each constituent other business entity
4 attached, which officers' certificates and certificates of merger
5 shall conform to the requirements of subdivision (g).

6 If one or more domestic other business entities is a disappearing
7 party in a merger pursuant to this subdivision in which a foreign
8 other business entity is the surviving entity, a certificate of merger
9 required by the laws under which each domestic other business
10 entity is organized, including subdivision (a) of Section 15678.4
11 or 15911.14, subdivision (b) of Section 16915, or subdivision (a)
12 of Section ~~17522~~ 17710.14, if applicable, shall also be filed at the
13 same time as the filing of the agreement of merger.

14 (4) If the date of the filing in this state pursuant to this
15 subdivision is more than six months after the time of the
16 effectiveness in the foreign jurisdiction, or if the powers of a
17 domestic disappearing corporation are suspended at the time of
18 effectiveness in the foreign jurisdiction, the merger shall be
19 effective as to the domestic disappearing corporation as of the date
20 of filing in this state.

21 (5) Each foreign disappearing corporation that is qualified for
22 the transaction of intrastate business shall automatically by the
23 filing pursuant to subdivision (g) surrender its right to transact
24 intrastate business as of the date of filing in this state or, if later,
25 the effective date of the merger. With respect to each foreign
26 disappearing other business entity previously registered for the
27 transaction of intrastate business in this state, the filing of the
28 agreement of merger pursuant to subdivision (g) automatically has
29 the effect of a cancellation of registration for that foreign other
30 business entity as of the date of filing in this state or, if later, the
31 effective date of the merger, without the necessity of the filing of
32 a certificate of cancellation.

33 *SEC. 13. Section 12540.1 of the Corporations Code is amended*
34 *to read:*

35 12540.1. (a) Any one or more corporations may merge with
36 one or more other business entities (Section 12242.5). Subject to
37 the provisions of Section 12530, one or more other domestic
38 corporations or foreign corporations (Section 12237) may be parties
39 to the merger.

1 Notwithstanding the provisions of this section, such a merger
2 may be effected only if:

3 (1) In a merger in which a domestic corporation or domestic
4 other business entity is a party, it is authorized by the laws under
5 which it is organized to effect the merger.

6 (2) In a merger in which a foreign corporation is a party, it is
7 authorized by the laws under which it is organized to effect the
8 merger.

9 (3) In a merger in which a foreign other business entity is a
10 party, it is authorized by the laws under which it is organized to
11 effect the merger.

12 (b) Each corporation, other domestic corporation, foreign
13 corporation, and other business entity which desires to merge shall
14 approve an agreement of merger. The board and the members of
15 each corporation which desires to merge shall approve (Sections
16 12222 and 12224) the agreement of merger. The agreement of
17 merger shall be approved on behalf of each other constituent party
18 by those persons authorized or required to approve the merger by
19 the laws under which it is organized.

20 The parties desiring to merge shall be parties to the agreement
21 of merger and other persons, including a parent party (Section
22 12242.6), may be parties to the agreement of merger. The
23 agreement of merger shall state all of the following:

24 (1) The terms and conditions of the merger.

25 (2) The name and place of incorporation or organization of each
26 party and the identity of the surviving party.

27 (3) The amendments, if any, subject to Sections 12500 and
28 12507, to the articles of the surviving corporation, if applicable,
29 to be effected by the merger. The name of the surviving corporation
30 may be, subject to subdivisions (b) and (c) of Section 12302, the
31 same as, or similar to, the name of a disappearing party to the
32 merger.

33 (4) The manner, if any, of converting the memberships or
34 securities of each of the constituent corporations into shares,
35 memberships, interests, or other securities of the surviving party
36 and, if any memberships or securities of any of the constituent
37 corporations are not to be converted solely into shares,
38 memberships, interests, or other securities of the surviving party,
39 the cash, rights, securities, or other property which the holders of
40 those memberships or securities are to receive in exchange for the

1 memberships or securities, which cash, rights, securities, or other
2 property may be in addition to or in lieu of shares, memberships,
3 interests, or other securities of the surviving party.

4 (5) Any other details or provisions required by the laws under
5 which any party to the merger is organized, including, if a domestic
6 limited partnership is a party to the merger, subdivision (a) of
7 Section 15678.2 or 15911.12, or, if a domestic general partnership
8 is a party to the merger, subdivision (a) of Section 16911, or, if a
9 domestic limited liability company is a party to the merger,
10 subdivision (a) of Section ~~17551~~ 17710.12.

11 (6) Any other details or provisions as are desired.

12 (c) Each membership of the same class of any constituent
13 corporation (other than the cancellation of memberships held by
14 a party to the merger or its parent or a wholly owned subsidiary
15 of either in another constituent corporation) shall be treated equally
16 with respect to any distribution of cash, property, rights, or
17 securities unless (i) all members of the class consent or (ii) the
18 commissioner has approved the terms and conditions of the
19 transaction and the fairness of those terms pursuant to Section
20 25142.

21 (d) Notwithstanding its prior approval, an agreement of merger
22 may be amended prior to the filing of the agreement of merger if
23 the amendment is approved by each constituent corporation in the
24 same manner as the original agreement of merger. If the agreement
25 of merger as so amended and approved is also approved by each
26 of the other parties to the agreement of merger, as so amended it
27 shall then constitute the agreement of merger.

28 (e) The board of a constituent corporation may, in its discretion,
29 abandon a merger, subject to the contractual rights, if any, of third
30 parties, including other parties to the agreement of merger, without
31 further approval by the members (Section 12224), at any time
32 before the merger is effective.

33 (f) Each constituent corporation shall sign the agreement of
34 merger by its chairperson of the board, president, or a vice president
35 and also by its secretary or an assistant secretary acting on behalf
36 of their respective corporations.

37 (g) After required approvals of the merger by each constituent
38 corporation and each other party to the merger, the surviving party
39 shall file a copy of the agreement of merger with an officers'
40 certificate of each constituent domestic and foreign corporation

1 attached stating the total number of outstanding shares or
2 membership interests of each class entitled to vote on the merger
3 (and identifying any other person or persons whose approval is
4 required), that the agreement of merger in the form attached or its
5 principal terms, as required, were approved by that corporation by
6 a vote of a number of shares or membership interests of each class
7 which equaled or exceeded the vote required, specifying each class
8 entitled to vote and the percentage vote required of each class,
9 and, if applicable, by that other person or persons whose approval
10 is required.

11 If equity securities of a parent party (Section 12242.6) are to be
12 issued in the merger, the officers' certificate or certificate of merger
13 of the controlled party shall state either that no vote of the
14 shareholders of the parent party was required or that the required
15 vote was obtained. The merger and any amendment of the articles
16 of the surviving corporation, if applicable, contained in the
17 agreement of merger shall be effective upon the filing of the
18 agreement of merger, subject to the provisions of subdivision (i).
19 If a domestic reciprocal insurer organized after 1974 to provide
20 medical malpractice insurance is a party to the merger, the
21 agreement of merger or certificate of merger shall not be filed until
22 there has been filed the certificate issued by the Insurance
23 Commissioner approving the merger pursuant to Section 1555 of
24 the Insurance Code.

25 In lieu of an officers' certificate, a certificate of merger, on a
26 form prescribed by the Secretary of State, shall be filed for each
27 constituent other business entity. The certificate of merger shall
28 be executed and acknowledged by each domestic constituent
29 limited liability company by all of the managers of the limited
30 liability company (unless a lesser number is specified in its articles
31 of organization or operating agreement) and by each domestic
32 constituent limited partnership by all general partners (unless a
33 lesser number is provided in its certificate of limited partnership
34 or partnership agreement) and by each domestic constituent general
35 partnership by two partners (unless a lesser number is provided in
36 its partnership agreement) and by each foreign constituent general
37 partnership or foreign constituent limited liability company by one
38 or more managers and by each foreign constituent limited
39 partnership by one or more general partners, and by each
40 constituent reciprocal insurer by the chairperson of the board,

1 president, or vice president, and by the secretary or assistant
2 secretary, or, if a constituent reciprocal insurer has not appointed
3 such officers, by the chairperson of the board, president, or vice
4 president, and by the secretary or assistant secretary of the
5 constituent reciprocal insurer's attorney-in-fact, and by each other
6 party to the merger by those persons required or authorized to
7 execute the certificate of merger by the laws under which that party
8 is organized, specifying for such party the provision of law or other
9 basis for the authority of the signing persons.

10 The certificate of merger shall set forth, if a vote of the
11 shareholders, members, partners, or other holders of interests of
12 the constituent other business entity was required, a statement
13 setting forth the total number of outstanding interests of each class
14 entitled to vote on the merger and that the agreement of merger or
15 its principal terms, as required, were approved by a vote of the
16 number of interests of each class which equaled or exceeded the
17 vote required, specifying each class entitled to vote and the
18 percentage vote required of each class, and any other information
19 required to be set forth under the laws under which the constituent
20 other business entity is organized, including, if a domestic limited
21 partnership is a party to the merger, subdivision (a) of Section
22 15678.4 or 15911.14, if a domestic general partnership is a party
23 to the merger, subdivision (b) of Section 16915, and, if a domestic
24 limited liability company is a party to the merger, subdivision (a)
25 of Section ~~17552~~ 17710.14. The certificate of merger for each
26 constituent foreign other business entity, if any, shall also set forth
27 the statutory or other basis under which that foreign other business
28 entity is authorized by the laws under which it is organized to
29 effect the merger.

30 The Secretary of State may certify a copy of the agreement of
31 merger separate from the officers' certificates and certificates of
32 merger attached thereto.

33 (h) A copy of an agreement of merger certified on or after the
34 effective date by an official having custody thereof has the same
35 force in evidence as the original and, except as against the state,
36 is conclusive evidence of the performance of all conditions
37 precedent to the merger, the existence on the effective date of the
38 surviving party to the merger, the performance of the conditions
39 necessary to the adoption of any amendment to the articles, if
40 applicable, contained in the agreement of merger, and of the merger

1 of the constituent corporations, either by themselves or together
2 with other constituent parties, into the surviving party to the
3 merger.

4 (i) (1) The merger of domestic corporations with foreign
5 corporations or foreign other business entities in a merger in which
6 one or more other business entities is a party shall comply with
7 subdivisions (a) and (g) and this subdivision.

8 (2) Subject to subdivision (c) of Section 12214 and paragraph
9 (3), the merger shall be effective as to each domestic constituent
10 corporation and domestic constituent other business entity upon
11 filing of the agreement of merger with attachments as provided in
12 subdivision (g).

13 (3) If the surviving party is a foreign corporation or foreign
14 other business entity, except as provided in paragraph (4), the
15 merger shall be effective as to any domestic disappearing
16 corporation as of the time of effectiveness in the foreign jurisdiction
17 upon the filing in this state of a copy of the agreement of merger
18 with an officers' certificate of the surviving foreign corporation
19 and of each constituent foreign and domestic corporation and a
20 certificate of merger of each constituent other business entity
21 attached, which officers' certificates and certificates of merger
22 shall conform to the requirements of subdivision (g).

23 If one or more domestic other business entities is a disappearing
24 party in a merger pursuant to this subdivision in which a foreign
25 other business entity is the surviving entity, a certificate of merger
26 required by the laws under which each domestic other business
27 entity is organized, including subdivision (a) of Section 15678.4
28 or 15911.14, subdivision (b) of Section 16915 or subdivision (a)
29 of Section ~~17552~~ 17710.14, if applicable, shall also be filed at the
30 same time as the filing of the agreement of merger.

31 (4) If the date of the filing in this state pursuant to this
32 subdivision is more than six months after the time of the
33 effectiveness in the foreign jurisdiction, or if the powers of a
34 domestic disappearing corporation are suspended at the time of
35 effectiveness in the foreign jurisdiction, the merger shall be
36 effective as to the domestic disappearing corporation as of the date
37 of filing in this state.

38 (5) Each foreign disappearing corporation that is qualified for
39 the transaction of intrastate business shall automatically by the
40 filing pursuant to subdivision (g) surrender its right to transact

1 intrastate business as of the date of filing in this state or, if later,
2 the effective date of the merger. With respect to each foreign
3 disappearing other business entity previously registered for the
4 transaction of intrastate business in this state, the filing of the
5 agreement of merger pursuant to subdivision (g) automatically has
6 the effect of a cancellation of registration for that foreign other
7 business entity without the necessity of the filing of a certificate
8 of cancellation.

9 *SEC. 14. Section 15911.03 of the Corporations Code is*
10 *amended to read:*

11 15911.03. (a) A limited partnership that desires to convert to
12 an other business entity or a foreign other business entity or a
13 foreign limited partnership shall approve a plan of conversion. The
14 plan of conversion shall state all of the following:

15 (1) The terms and conditions of the conversion.

16 (2) The place of the organization of the converted entity and of
17 the converting limited partnership and the name of the converted
18 entity after conversion.

19 (3) The manner of converting the limited and general partnership
20 interests of each of the partners into shares of, securities of, or
21 interests in, the converted entity.

22 (4) The provisions of the governing documents for the converted
23 entity, including the partnership agreement, limited liability
24 company articles of organization and operating agreement, or
25 articles or certificate of incorporation if the converted entity is a
26 corporation, to which the holders of interests in the converted entity
27 are to be bound.

28 (5) Any other details or provisions that are required by the laws
29 under which the converted entity is organized, or that are desired
30 by the parties.

31 (b) The plan of conversion shall be approved by all general
32 partners of the converting limited partnership and by a majority
33 in interest of each class of limited partners of the converting limited
34 partnership, unless a greater or lesser approval is required by the
35 partnership agreement of the converting limited partnership.
36 However, if the limited partners of the limited partnership would
37 become personally liable for any obligations of the converted entity
38 as a result of the conversion, the plan of conversion shall be
39 approved by all of the limited partners of the converting limited
40 partnership, unless the plan of conversion provides that all limited

1 partners will have dissenters' rights as provided in Article 11.5
2 (commencing with Section 15911.20).

3 (c) Upon the effectiveness of the conversion, all partners of the
4 converting limited partnership, except those that exercise
5 dissenters' rights as provided in Article 11.5 (commencing with
6 Section 15911.20), shall be deemed parties to any governing
7 documents for the converted entity adopted as part of the plan of
8 conversion, irrespective of whether or not the partner has executed
9 the plan of conversion or the governing documents for the
10 converted entity. Any adoption of governing documents made
11 pursuant thereto shall be effective at the effective time or date of
12 the conversion.

13 (d) Notwithstanding its prior approval, a plan of conversion
14 may be amended before the conversion takes effect if the
15 amendment is approved by all general partners of the converting
16 limited partnership and, if the amendment changes any of the
17 principal terms of the plan of conversion, the amendment is
18 approved by the limited partners of the converting limited
19 partnership in the same manner and to the same extent as required
20 for the approval of the original plan of conversion.

21 (e) The general partners of a converting limited partnership
22 may, by unanimous approval at any time before the conversion is
23 effective, in their discretion, abandon a conversion, without further
24 approval by the limited partners, subject to the contractual rights
25 of third parties other than limited partners.

26 (f) The converted entity shall keep the plan of conversion at the
27 principal place of business of the converted entity if the converted
28 entity is a domestic partnership or foreign other business entity,
29 at the principal executive office of, or registrar or transfer agent
30 of, the converted entity, if the converted entity is a domestic
31 corporation, or at the office at which records are to be kept under
32 ~~Section 17057~~ 17701.13 if the converted entity is a domestic
33 limited liability company. Upon the request of a partner of a
34 converting limited partnership, the authorized person on behalf of
35 the converted entity shall promptly deliver to the partner or the
36 holder of shares, interests, or other securities, at the expense of the
37 converted entity, a copy of the plan of conversion. A waiver by a
38 partner of the rights provided in this subdivision shall be
39 unenforceable.

1 *SEC. 15. Section 15911.08 of the Corporations Code is*
2 *amended to read:*

3 15911.08. (a) An other business entity or a foreign other
4 business entity or a foreign limited partnership may be converted
5 to a domestic limited partnership pursuant to this article only if
6 the converting entity is authorized by the laws under which it is
7 organized to effect the conversion.

8 (b) An other business entity or a foreign other business entity
9 or a foreign limited partnership that desires to convert into a
10 domestic limited partnership shall approve a plan of conversion
11 or another instrument as is required to be approved to effect the
12 conversion pursuant to the laws under which that entity is
13 organized.

14 (c) The conversion of an other business entity or a foreign other
15 business entity or a foreign limited partnership into a domestic
16 limited partnership shall be approved by the number or percentage
17 of the partners, members, shareholders, or holders of interest of
18 the converting entity as is required by the laws under which that
19 entity is organized, or a greater or lesser percentage, subject to
20 applicable laws, as set forth in the converting entity's partnership
21 agreement, articles of organization, operating agreement, articles
22 or certificate of incorporation, or other governing document.

23 (d) The conversion by an other business entity or a foreign other
24 business entity or a foreign limited partnership into a domestic
25 limited partnership shall be effective under this article at the time
26 the conversion is effective under the laws under which the
27 converting entity is organized, as long as a certificate of limited
28 partnership containing a statement of conversion has been filed
29 with the Secretary of State. If the converting entity's governing
30 law is silent as to the effectiveness of the conversion, the
31 conversion shall be effective upon the completion of all acts
32 required under this title to form a limited partnership.

33 (e) The filing with the Secretary of State of a certificate of
34 conversion or a certificate of limited partnership containing a
35 statement of conversion pursuant to subdivision (a) shall have the
36 effect of the filing of a certificate of cancellation by the converting
37 foreign limited partnership or foreign limited liability company
38 and no converting foreign limited partnership or foreign limited
39 liability company that has made the filing is required to file a
40 certificate of cancellation under Section 15902.03 or ~~17455~~

1 17708.08 as a result of that conversion. If a converting other
2 business entity is a foreign corporation qualified to transact
3 business in this state, the foreign corporation shall, by virtue of
4 the filing, automatically surrender its right to transact intrastate
5 business.

6 *SEC. 16. Section 16903 of the Corporations Code is amended*
7 *to read:*

8 16903. (a) A partnership that desires to convert to a domestic
9 or foreign other business entity shall approve a plan of conversion.
10 The plan of conversion shall state the following:

11 (1) The terms and conditions of the conversion.

12 (2) The place of the organization of the converted entity and of
13 the converting partnership and the name of the converted entity
14 after conversion, if different from that of the converting partnership.

15 (3) The manner of converting the partnership interests of each
16 of the partners into shares of, securities of, or interests in the
17 converted entity.

18 (4) The provisions of the governing documents for the converted
19 entity, including the limited partnership agreement, limited liability
20 company articles of organization and operating agreement, or
21 articles or certificate of incorporation if the converted entity is a
22 corporation, to which the holders of interest in the converted entity
23 are to be bound.

24 (5) Any other details or provisions as are required by laws under
25 which the converted entity is organized.

26 (6) Any other details or provisions that are desired.

27 (b) The plan of conversion shall be approved by that number
28 or percentage of partners required by the partnership agreement
29 to approve a conversion of the partnership as set forth in the
30 partnership agreement. If the partnership agreement fails to specify
31 the required partner approval for a conversion of the partnership,
32 the plan of conversion shall be approved by that number or
33 percentage of partners required by the partnership agreement to
34 approve an amendment to the partnership agreement unless the
35 conversion effects a change for which the partnership agreement
36 requires a greater number or percentage of partners than that
37 required to amend the partnership agreement, in which case the
38 plan of conversion shall be approved by that greater number or
39 percentage. If the partnership agreement fails to specify the vote

1 required to amend the partnership agreement, the plan of
2 conversion shall be approved by all partners.

3 (c) If the partnership is converting into a limited partnership, in
4 addition to the approval of the partners as set forth in subdivision
5 (b), the plan of conversion shall be approved by all partners who
6 will become general partners of the converted limited partnership
7 pursuant to the plan of conversion.

8 (d) All partners of the converting partnership except those that
9 dissociate upon effectiveness of the conversion pursuant to
10 subdivision (e) of Section 16909 shall be deemed parties to any
11 partnership or operating agreement, articles or certificate of
12 incorporation, or organic document for the converted entity adopted
13 as part of the plan of conversion, regardless of whether that partner
14 has executed the plan of conversion or the operating agreement,
15 articles or certificate of incorporation, partnership agreement, or
16 other organic document for the converted entity. Any adoption of
17 a new partnership or operating agreement, articles or certificate
18 of incorporation, or other organic document made pursuant to the
19 foregoing sentence shall be effective at the effective time or date
20 of the conversion.

21 (e) Notwithstanding its prior approval, a plan of conversion may
22 be amended before the conversion takes effect if the amendment
23 is approved by the partnership in the same manner, and by the
24 same number or percentage of partners, as was required for
25 approval of the original plan of conversion.

26 (f) The partners of a converting partnership may, at any time
27 before the conversion is effective, in their discretion, abandon a
28 conversion, without further approval by the partners, in the same
29 manner, and by the same number or percentage of partners, as was
30 required for approval of the original plan of conversion at any time
31 before the conversion is effective, subject to the contractual rights
32 of third parties.

33 (g) The converted entity shall keep the plan of conversion at:
34 (1) the principal place of business of the converted entity, if the
35 converted entity is a foreign other business entity or a corporation;
36 or (2) the office at which records are to be kept under Section
37 15614 or 15901.14 if the converted entity is a domestic limited
38 partnership, or at the office at which records are to be kept under
39 Section ~~47057~~ 17701.13 if the converted entity is a domestic
40 limited liability company. Upon the request of a partner of a

1 converting partnership, the authorized person on behalf of the
2 converted entity shall promptly deliver to the partner or the holder
3 of interests or other securities, at the expense of the converted
4 entity, a copy of the plan of conversion. A waiver by a partner of
5 the rights provided in this subdivision shall be unenforceable.

6 *SEC. 17. Section 16908 of the Corporations Code is amended*
7 *to read:*

8 16908. (a) A domestic limited partnership, limited liability
9 company, or corporation, or a foreign other business entity may
10 be converted to a domestic partnership pursuant to this article, but
11 only if the converting entity is authorized by the laws under which
12 it is organized to effect the conversion.

13 (b) An entity that desires to convert into a domestic partnership
14 shall approve a plan of conversion or the instrument that is required
15 to be approved to effect the conversion pursuant to the laws under
16 which the entity is organized.

17 (c) The conversion of a domestic limited partnership, limited
18 liability company, or corporation, or foreign other business entity
19 shall be approved by the number or percentage of the partners,
20 members, shareholders, or holders of interest of the converting
21 entity as is required by the law under which the entity is organized,
22 or a greater or lesser percentage (subject to applicable laws) as set
23 forth in the limited partnership agreement, articles of organization,
24 operating agreement, or articles or certificate of organization, or
25 other governing document for the converting entity.

26 (d) The conversion by a domestic limited partnership, limited
27 liability company, or corporation, or a foreign other business entity
28 into a partnership shall be effective under this article at the time
29 that the conversion is effective under the laws under which the
30 converting entity is organized.

31 (e) The filing with the Secretary of State of a certificate of
32 conversion or a statement of partnership authority containing a
33 statement of conversion pursuant to subdivision (a) shall have the
34 effect of the filing of a certificate of cancellation by the converting
35 foreign limited partnership or foreign limited liability company,
36 and no converting foreign limited partnership or foreign limited
37 liability company that has made the filing is required to file a
38 certificate of cancellation under Section 15696, 15909.07, or ~~17455~~
39 ~~17708.08~~ as a result of that conversion. If a converting other
40 business entity is a foreign corporation qualified to transact

1 business in this state, the foreign corporation shall, by virtue of
2 the filing, automatically surrender its right to transact intrastate
3 business.

4 *SEC. 18. Section 16911 of the Corporations Code is amended*
5 *to read:*

6 16911. (a) Each partnership and other business entity which
7 desires to merge shall approve an agreement of merger. The
8 agreement of merger shall be approved by the number or
9 percentage of partners specified for merger in the partnership
10 agreement of the constituent partnership. If the partnership
11 agreement fails to specify the required partner approval for merger
12 of the constituent partnership, then the agreement of merger shall
13 be approved by that number or percentage of partners specified
14 by the partnership agreement to approve an amendment to the
15 partnership agreement. However, if the merger effects a change
16 for which the partnership agreement requires a greater number or
17 percentage of partners than that required to amend the partnership
18 agreement, then the merger shall be approved by that greater
19 number or percentage. If the partnership agreement contains no
20 provision specifying the vote required to amend the partnership
21 agreement, then the agreement of merger must be approved by all
22 the partners. The agreement of merger shall be approved on behalf
23 of each constituent other business entity by those persons required
24 to approve the merger by the laws under which it is organized.
25 Other persons may be parties to the agreement of merger. The
26 agreement of merger shall state all of the following:

27 (1) The terms and conditions of the merger.

28 (2) The name and place of organization of the surviving
29 partnership or surviving other business entity, and of each
30 disappearing partnership and disappearing other business entity,
31 and the agreement of merger may change the name of the surviving
32 partnership, which new name may be the same as, or similar to,
33 the name of a disappearing partnership.

34 (3) The manner of converting the partnership interests of each
35 of the constituent partnerships into interests or other securities of
36 the surviving partnership or surviving other business entity, and
37 if partnership interests of any of the constituent partnerships are
38 not to be converted solely into interest or other securities of the
39 surviving partnership or surviving other business entity, the cash,
40 property, rights, interests, or securities which the holders of the

1 partnership interest are to receive in exchange for the partnership
2 interests, which cash, property, rights, interests, or securities may
3 be in addition to or in lieu of interests or other securities of the
4 surviving partnership or surviving other business entity, or that
5 the partnership interests are canceled without consideration.

6 (4) Any other details or provisions as are required by the laws
7 under which any constituent other business entity is organized.

8 (5) Any other details or provisions that are desired, including,
9 without limitation, a provision for the treatment of fractional
10 partnership interests.

11 (b) If the partnership is merging into a limited partnership, then
12 in addition to the approval of the partners as set forth under
13 subdivision (a), the agreement of merger must be approved by all
14 partners who will become general partners of the surviving limited
15 partnership upon the effectiveness of the merger.

16 (c) Notwithstanding its prior approval, an agreement of merger
17 may be amended before the merger takes effect if the amendment
18 is approved by the partners of each constituent partnership, in the
19 same manner as required for approval of the original agreement
20 of merger, and by each of the constituent other business entities.

21 (d) The partners of a constituent partnership may in their
22 discretion, abandon a merger, subject to the contractual rights, if
23 any, of third parties, including other constituent partnerships and
24 constituent other business entities, if the abandonment is approved
25 by the partners of the constituent partnership in the same manner
26 as required for approval of the original agreement of merger.

27 (e) An agreement of merger approved in accordance with
28 subdivision (a) may (1) effect any amendment to the partnership
29 agreement of any domestic constituent partnership or (2) effect
30 the adoption of a new partnership agreement for a domestic
31 constituent partnership if it is the surviving partnership in the
32 merger. Any amendment to a partnership agreement or adoption
33 of a new partnership agreement made pursuant to the foregoing
34 sentence shall be effective at the effective time or date of the
35 merger.

36 (f) The surviving partnership or surviving other business entity
37 shall keep the agreement of merger at the principal place of
38 business of the surviving entity if the surviving entity is a
39 partnership or a foreign other business entity, at the office referred
40 to in Section 1500 if the surviving entity is a domestic corporation,

1 at the office referred to in subdivision (a) of Section 15614 or
2 15901.14 if the surviving entity is a domestic limited partnership
3 or at the office referred to in Section ~~17057~~ 17701.13 if the
4 surviving entity is a domestic limited liability company and, upon
5 the request of a partner of a constituent partnership or a holder of
6 interests or other securities of a constituent other business entity,
7 the authorized person on behalf of the partnership or the surviving
8 other business entity shall promptly deliver to the partner or the
9 holder of interests or other securities, at the expense of the
10 surviving partnership or surviving other business entity, a copy of
11 the agreement of merger. A waiver by a partner or holder of
12 interests or other securities of the rights provided in this subdivision
13 shall be unenforceable.

14 ~~SECTION 1.~~

15 *SEC. 19.* Section 17657 is added to the Corporations Code, to
16 read:

17 17657. This title shall become inoperative on January 1, ~~2013~~
18 2014, and is repealed on January 1, ~~2015~~ 2016.

19 ~~SEC. 2.~~

20 *SEC. 20.* Title 2.5 (commencing with Section 17701.01) is
21 added to the Corporations Code, to read:

22
23 TITLE ~~2.5~~ 2.6. CALIFORNIA REVISED UNIFORM
24 LIMITED LIABILITY COMPANY ACT
25

26 Article 1. General Provisions
27

28 17701.01. This title may be cited as the California Revised
29 Uniform Limited Liability Company Act.

30 17701.02. In this title:

31 (a) “Acknowledged” means that an instrument is either of the
32 following:

33 (1) Formally acknowledged as provided in Article 3
34 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
35 4 of Division 2 of the Civil Code.

36 (2) Executed to include substantially the following wording
37 preceding the signature:

38
39 “It is hereby declared that I am the person who executed this
40 instrument which execution is my act and deed. Any certificate of

1 acknowledgment taken without this state before a notary public
2 or a judge or clerk of a court of record having an official seal need
3 not be further authenticated.”
4

5 (b) “Articles of organization” means the articles required by
6 Section 17702.01. ~~the~~ *The* term includes the articles of organization
7 as amended or restated.

8 (c) “Contribution” means any benefit provided by a person to
9 a limited liability company:

10 (1) In order to become a member upon formation of the limited
11 liability company and in accordance with an agreement between
12 or among the persons that have agreed to become the initial
13 members of the limited liability company.

14 (2) In order to become a member after formation of the limited
15 liability company and in accordance with an agreement between
16 the person and the limited liability company.

17 (3) In the person’s capacity as a member and in accordance with
18 the operating agreement or an agreement between the member and
19 the limited liability company.

20 (d) “Debtor in bankruptcy” means a person that is the subject
21 of either of the following:

22 (1) An order for relief under Title 11 of the United States Code
23 or a successor statute of general application.

24 (2) A comparable order under federal, state, or foreign law
25 governing bankruptcy or insolvency, an assignment for the benefit
26 of creditors, or an order appointing a trustee, receiver, or liquidator
27 of the person or of all or substantially all of the person’s property.

28 (e) “Designated office” means either of the following:

29 (1) The office that a limited liability company is required to
30 designate and maintain under Section 17701.13.

31 (2) The principal office of a foreign limited liability company.

32 (f) “Distribution,” except as otherwise provided in subdivision
33 (g) of Section 17704.05, means a transfer of money or other
34 property from a limited liability company to another person on
35 account of a transferable interest.

36 (g) “Domestic” means organized under the laws of this state
37 when used in relation to any limited liability company, other
38 business entity, or person other than a natural person.

1 (h) “Effective,” with respect to a record required or permitted
2 to be delivered to the Secretary of State for filing under this title,
3 means effective under subdivision (c) of Section 17702.05.

4 (i) (1) “Electronic transmission by the limited liability
5 company” means a communication delivered by any of the
6 following means:

7 (A) ~~A facsimile~~ *Facsimile* telecommunication or electronic mail
8 when directed to the facsimile number or electronic mail address,
9 respectively, for that recipient on record with the limited liability
10 company.

11 (B) Posting on an electronic message board or network that the
12 limited liability company has designated for those communications,
13 together with a separate notice to the recipient of the posting, which
14 transmission shall be validly delivered upon the later of the posting
15 or delivery of the separate notice thereof.

16 (C) Other means of electronic communication to which both of
17 the following apply:

18 (i) The communication is delivered to a recipient who has
19 provided an unrevoked consent to the use of those means of
20 transmission.

21 (ii) The communication creates a record that is capable of
22 retention, retrieval, and review, and that may thereafter be rendered
23 into clearly legible tangible form. However, an electronic
24 transmission by a limited liability company to an individual
25 member is not authorized unless, in addition to satisfying the
26 requirements of this section, the transmission satisfies the
27 requirements applicable to consumer consent to electronic records
28 as set forth in the *federal* Electronic Signatures in Global and
29 National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

30 (2) “Electronic transmission to the limited liability company”
31 means a communication delivered by any of the following means:

32 (A) Facsimile telecommunication or electronic mail when
33 directed to the facsimile number or electronic mail address,
34 respectively, that the limited liability company has provided from
35 time to time to members or managers for sending communications
36 to the limited liability company.

37 (B) Posting on an electronic message board or network that the
38 limited liability company has designated for those communications,
39 which transmission shall be validly delivered upon the posting.

1 (C) Other means of electronic communication to which both of
2 the following apply:

3 (i) The limited liability company has placed in effect reasonable
4 measures to verify that the sender is the member or manager, in
5 person or by proxy, purporting to send the transmission.

6 (ii) The communication creates a record that is capable of
7 retention, retrieval, and review, and that may thereafter be rendered
8 into clearly legible tangible form.

9 (j) “Foreign limited liability company” means an unincorporated
10 entity formed under the law of a jurisdiction other than this state
11 and denominated by that law as a limited liability company.

12 (k) “Limited liability company,” except in the phrase “foreign
13 limited liability company,” means an entity formed under this title.

14 (l) “Majority of the managers” unless otherwise provided in the
15 operating agreement, means more than 50 percent of the interests
16 of managers in current profits of the limited liability company.

17 (m) “Majority of the members” unless otherwise provided in
18 the operating agreement, means more than 50 percent of the
19 membership interests of members in current profits of the limited
20 liability company.

21 (n) “Manager” means a person that under the operating
22 agreement of a manager-managed limited liability company is
23 responsible, alone or in concert with others, for performing the
24 management functions stated in subdivision (c) of Section
25 17704.07.

26 (o) “Manager-managed limited liability company” means a
27 limited liability company that qualifies under subdivision (a) of
28 Section 17704.07.

29 (p) “Member” means a person that has become a member of a
30 limited liability company under Section 17704.01 and has not
31 dissociated under Section 17706.02.

32 (q) “Member-managed limited liability company” means a
33 limited liability company that is not a manager-managed limited
34 liability company.

35 (r) “Membership interest” means a member’s rights in the
36 limited liability company, including the member’s transferrable
37 interest, any right to vote or participate in management, and any
38 right to information concerning the business and affairs of the
39 limited liability company provided by this title.

(s) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in subdivision (a) of Section 17701.10. An operating agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the operating agreement. The term includes the agreement as amended or restated.

(t) “Organization” means, whether domestic or foreign, a partnership whether general or limited, limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, or statutory business trust having a governing statute.

(u) “Organizer” means a person that acts under Section 17702.01 to form a limited liability company.

~~(v) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.~~

(v) “Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign. Nothing in this subdivision shall be construed to confer any rights under the California Constitution or the United States Constitution.

(w) “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(x) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(y) “Series” means one or more designated series of assets of a limited liability company established in accordance with Section 17712.01.~~

~~(z)~~

(y) “Sign” means, with the present intent to authenticate or adopt a record, either of the following:

(1) To execute or adopt a tangible symbol.

(2) To attach to or logically associate with the record an electronic symbol, sound, or process.

(aa)

(z) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(ab)

(aa) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(ae)

(ab) “Transferable interest” means the right, as originally associated with a person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(ad)

(ac) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

~~17701.03. (a) A person knows a fact when either of the following applies:~~

~~(1) The person has actual knowledge of the fact.~~

~~(2) The person is deemed to know the fact under paragraph (1) of subdivision (d) or law other than this title.~~

~~(b) A person has notice of a fact when either of the following applies:~~

~~(1) The person has reason to know the fact from all of the facts known to the person at the time in question.~~

~~(2) The person is deemed to have notice of the fact under paragraph (2) of subdivision (d).~~

~~(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.~~

~~(d) A person that is not a member is deemed:~~

~~(1) To know of a limitation on authority to transfer real property as provided in subdivision (g) of Section 17703.02.~~

~~(2) To have notice, with respect to a limited liability company, of all of the following:~~

1 ~~(A) Dissolution, 90 days after a certificate of dissolution under~~
2 ~~subdivision (a) of Section 17707.08 has been filed.~~

3 ~~(B) Termination, 90 days after a certificate of cancellation under~~
4 ~~either Section 17707.02 or subdivision (b) of Section 17707.08~~
5 ~~has been filed.~~

6 ~~(C) Merger or conversion, 90 days after certificate of merger~~
7 ~~or conversion under Article 10 (commencing with Section~~
8 ~~17710.01) becomes effective.~~

9 ~~(e) A member's knowledge, notice, or receipt of a notification~~
10 ~~of a fact relating to the limited liability company is not knowledge,~~
11 ~~notice, or receipt of a notification of a fact by the limited liability~~
12 ~~company solely by reason of the member's capacity as a member.~~

13 17701.04. (a) A limited liability company is an entity distinct
14 from its members.

15 (b) A limited liability company may have any lawful purpose,
16 regardless of whether for profit, except the banking business, the
17 business of issuing policies of insurance and assuming insurance
18 risks, or the trust company business. A domestic or foreign limited
19 liability company may render services that may be lawfully
20 rendered only pursuant to a license, certificate, or registration
21 authorized by the Business and Professions Code, the Chiropractic
22 Act, the Osteopathic Act, or the Yacht and Ship Brokers Act, if
23 the applicable provisions of the Business and Professions Code,
24 the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship
25 Brokers Act authorize a limited liability company to hold that
26 license, certificate, or registration.

27 (c) A limited liability company has perpetual duration.

28 (d) Notwithstanding subdivision (a) and as specifically provided
29 in this subdivision, a limited liability company may operate as a
30 health care service plan licensed pursuant to Chapter 2.2
31 (commencing with Section 1340) of Division 2 of the Health and
32 Safety Code if the limited liability company is a subsidiary of a
33 health care service plan licensed pursuant to those provisions and
34 the limited liability company is established to serve an existing
35 line of business of the parent health care service plan.
36 Notwithstanding any other law, the tort or contract liability of a
37 limited liability company created to operate as a health care service
38 plan under this subdivision and its members is not limited or
39 restricted in any manner because of the limited liability company
40 status of the health care service plan.

(e) Nothing in this title shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of Section 13401 and in Section 13401.3, in this state.

17701.05. ~~(a) A~~ *Subject to any limitation contained in the articles of organization and to compliance with any other applicable laws, a* limited liability company established under this title has the power and capacity in the limited liability company's own name to do all of the following:

- ~~(1)~~
- (a) Sue and be sued.
- ~~(2)~~
- (b) Contract.
- ~~(3)~~
- (c) Hold and convey title to assets of the limited liability company, including real property, personal property, and intangible property.
- ~~(4)~~
- (d) Grant lien and security interests in the assets of the limited liability company.

~~(b) A series established under this title has the power and capacity in the series' own name to do all of the following:~~

- ~~(1) Sue and be sued.~~
- ~~(2) Contract.~~
- ~~(3) Hold and convey title to assets of the series, including real property, personal property, and intangible property.~~
- ~~(4) Grant liens and security interests in assets of the series.~~

17701.06. The law of this state governs all of the following:

- (a) The internal affairs of a limited liability company.
- (b) The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.
- (c) The authority of the members and agents of a limited liability company.
- ~~(d) The availability of the assets of a series or the obligations of another series or the limited liability company.~~

17701.07. (a) It is the policy of this title and this state to give maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.

1 (b) Unless displaced by particular provisions of this title, the
2 principles of law and equity supplement this title.

3 (c) Rules that statutes in derogation of the common law are to
4 be strictly construed shall have no application to this title.

5 (d) Unless the context otherwise requires, as used in this title,
6 the singular shall include the plural and the plural may refer to
7 only the singular. The use of any gender shall be applicable to all
8 genders.

9 17701.08. (a) The name of a limited liability company shall
10 contain the words “limited liability company,” or the abbreviation
11 “L.L.C.” or “LLC.” “Limited” may be abbreviated as “Ltd.,” and
12 “company” may be abbreviated as “Co.”

13 (b) Unless authorized by subdivision (c), the name of a limited
14 liability company shall not be a name that the Secretary of State
15 determines is likely to mislead the public and shall be
16 distinguishable in the records of the Secretary of State from all of
17 the following:

18 (1) The name of each person that is not an individual and that
19 is incorporated, organized, or authorized to transact business in
20 this state.

21 (2) Each name reserved under Section 17701.09.

22 (c) A limited liability company may apply to the Secretary of
23 State for authorization to use a name that does not comply with
24 subdivision (b). The Secretary of State shall authorize use of the
25 name applied for if, as to each noncomplying name, either of the
26 following applies:

27 (1) The present user, registrant, or owner of the noncomplying
28 name consents in a signed record to the use and submits an
29 undertaking in a form satisfactory to the Secretary of State to
30 change the noncomplying name to a name that complies with
31 subdivision (b) and is distinguishable in the records of the Secretary
32 of State from the name applied for.

33 (2) The applicant delivers to the Secretary of State a certified
34 copy of the final judgment of a court establishing the applicant’s
35 right to use in this state the name applied for.

36 (d) Subject to Section 17708.04, this section applies to a foreign
37 limited liability company transacting business in this state that has
38 a certificate of registration to transact business in this state or that
39 has applied for a certificate of registration.

1 (e) The name shall not include the words ~~bank, trusts, trustee,~~
2 ~~incorporated, inc., corporation, or corp.~~ “bank,” “trusts,”
3 “trustee,” “incorporated,” “inc.,” “corporation,” or “corp.” and
4 shall not include the words ~~insurer~~ “insurer” or ~~insurance company~~
5 “insurance company” or any other words suggesting that it is in
6 the business of issuing policies of insurance and assuming
7 insurance risks.

8 17701.09. (a) A person may reserve the exclusive use of the
9 name of a limited liability company, including a fictitious or
10 assumed name for a foreign limited liability company whose name
11 is not available, by delivering an application to the Secretary of
12 State for filing. The application shall state the name and address
13 of the applicant and the name proposed to be reserved. If the
14 Secretary of State finds that the name applied for is available, it
15 shall be reserved for the applicant’s exclusive use for up to 60
16 days. The Secretary of State shall not issue certificates reserving
17 the same name for two or more consecutive 60-day periods to the
18 same applicant or for the use or benefit of the same person; nor
19 shall consecutive reservations be made by or for the use or benefit
20 of the same person for a name so similar as to fall within the
21 prohibitions of subdivision (b) of Section 17701.08.

22 (b) The owner of a name reserved for a limited liability company
23 may transfer the reservation to another person by delivering to the
24 Secretary of State for filing a signed notice of the transfer which
25 states the name and address of the transferee.

26 17701.10. (a) Except as otherwise provided in subdivisions
27 (b) and (c), the operating agreement governs all of the following:

28 (1) Relations among the members as members and between the
29 members and the limited liability company.

30 (2) The rights and duties under this title of a person in the
31 capacity of manager.

32 (3) The activities of the limited liability company and the
33 conduct of those activities.

34 (4) The means and conditions for amending the operating
35 agreement.

36 (b) To the extent the operating agreement does not otherwise
37 provide for a matter described in subdivision (a), this title governs
38 the matter.

39 (c) An operating agreement shall not do any of the following:

1 (1) Vary a limited liability company's capacity, ~~or the capacity~~
2 ~~of a series of a limited liability company~~ under Section 17701.05
3 to sue and be sued in its own name.

4 (2) Vary the law applicable under Section 17701.06.

5 (3) Vary the power of the court under Section 17702.04.

6 (4) Subject to subdivisions (d) to ~~(g)~~ (i), inclusive, eliminate
7 the duty of loyalty, the duty of care, or any other fiduciary duty.

8 (5) Subject to subdivisions (d) to ~~(g)~~ (i), inclusive, eliminate
9 the contractual obligation of good faith and fair dealing under
10 subdivision (d) of Section 17704.09.

11 (6) Unreasonably restrict the duties and rights stated in Section
12 17704.10.

13 (7) Vary the power of a court to decree dissolution in the
14 circumstances specified in subdivision (a) of Section 17707.03 or
15 the provisions for avoidance of dissolution in subdivision (c) of
16 Section 17707.03.

17 (8) Except as stated herein, vary the requirements of Sections
18 17707.04 to 17707.08, inclusive.

19 (9) Unreasonably restrict the right of a member to maintain an
20 action under Article 9 (commencing with Section 17709.01).

21 (10) Restrict the right to approve a merger, conversion, or
22 domestication under Section 17710.14 to a member that will have
23 personal liability with respect to a surviving, converted, or
24 domesticated organization.

25 (11) Except as otherwise provided in subdivision (b) of Section
26 17701.12, restrict the rights under this title of a person other than
27 a member or manager.

28 (12) Vary any provision under Article 10 (commencing with
29 Section 17710.01).

30 (13) Vary any provision under Article 12 (commencing with
31 Section 17712.01).

32 (14) Eliminate the duty of loyalty under subdivision (b) of
33 Section 17704.09, but the operating agreement may do any of the
34 following:

35 (A) Identify specific types or categories of activities that do not
36 violate the duty of loyalty, if not manifestly unreasonable.

37 (B) Specify the number or percentage of members that may
38 authorize or ratify, after full disclosure to all members of all
39 material facts, a specific act or transaction that otherwise would
40 violate the duty of loyalty.

1 (15) Unreasonably reduce the duty of care under subdivision
2 (c) of Section 17704.09.

3 (16) Eliminate the obligation of good faith and fair dealing under
4 subdivision (d) of Section 17704.09, but the operating agreement
5 may prescribe the standards by which the performance of the
6 obligation is to be measured, if the standards are not manifestly
7 unreasonable.

8 *(d) The effects of the provisions of this title may be varied as*
9 *among the members or as between the members and the limited*
10 *liability company by the articles of organization or operating*
11 *agreement; provided, however, that the provisions of Sections*
12 *17701.13, 17703.01, 17704.07, and 17704.08 shall only be varied*
13 *by the articles of organization or a written operating agreement.*
14 *Notwithstanding the first sentence of this subdivision, neither the*
15 *articles of organization nor the operating agreement shall do either*
16 *of the following:*

17 *(1) Vary the definitions of Section 17701.02, except as*
18 *specifically provided therein.*

19 *(2) Vary a member's rights under Sections 17701.13 and*
20 *17703.01.*

21 *(e) The fiduciary duties of a manager to the limited liability*
22 *company and to the members of the limited liability company shall*
23 *only be modified in a written operating agreement with the*
24 *informed consent of the members.*

25 ~~(f)~~

26 *(f) To the extent the operating agreement of a member-managed*
27 *limited liability company expressly relieves a member of a*
28 *responsibility that the member would otherwise have under this*
29 *title and imposes the responsibility on one or more other members,*
30 *the operating agreement may, to the benefit of the member that*
31 *the operating agreement relieves of the responsibility, also*
32 *eliminate or limit any fiduciary duty that would have pertained to*
33 *the responsibility.*

34 ~~(g)~~

35 *(g) The operating agreement may alter or eliminate the*
36 *indemnification for a member or manager provided by subdivision*
37 *(a) of Section 17704.08 and may eliminate or limit a member or*
38 *manager's liability to the limited liability company and members*
39 *for money damages, except for the following:*

40 *(1) Breach of the duty of loyalty.*

1 (2) A financial benefit received by the member or manager to
2 which the member or manager is not entitled.

3 (3) A breach of a duty under Section 17704.06.

4 (4) Intentional infliction of harm on the limited liability company
5 or a member.

6 (5) An intentional violation of criminal law.

7 ~~(f)~~

8 (h) A court shall decide any claim under subdivision ~~(d)~~ (f) that
9 a term of an operating agreement is manifestly unreasonable.

10 (1) The court shall make its determination as of the time the
11 challenged term became part of the operating agreement and by
12 considering only circumstances existing at that time.

13 (2) The court may invalidate the term only if, in light of the
14 purposes and activities of the limited liability company, it is readily
15 apparent that either of the following apply:

16 (A) The objective of the term is unreasonable.

17 (B) The term is an unreasonable means to achieve the
18 provision's objective.

19 ~~(g)~~

20 (i) An operating agreement may provide that:

21 (1) A member or transferee that fails to perform in accordance
22 with, or to comply with the terms and conditions of, the operating
23 agreement shall be subject to specified penalties or specified
24 consequences.

25 (2) At the time or upon the happening of events specified in the
26 operating agreement, a member or transferee may be subject to
27 specified penalties or specified consequences. The penalty or
28 consequence may include and take the form of reducing or
29 eliminating the defaulting member's or transferee's proportionate
30 interest in a limited liability company, subordinating the member's
31 or transferee's membership interest to that of nondefaulting
32 members or transferees, forcing a sale of that membership interest,
33 forfeiting the defaulting member's or transferee's membership
34 interest, the lending by other members or transferees of the amount
35 necessary to meet the defaulting member's or transferee's
36 commitment, a fixing of the value of the defaulting member's or
37 transferee's membership interest by appraisal or by formula and
38 redemption or sale of the membership interest at that value, or
39 other penalty or consequence.

1 17701.11. (a) A limited liability company is bound by and
2 may enforce the operating agreement, whether or not the limited
3 liability company has itself manifested assent to the operating
4 agreement.

5 (b) A person that becomes a member of a limited liability
6 company is deemed to assent to the operating agreement.

7 (c) Two or more persons intending to become the initial
8 members of a limited liability company may make an agreement
9 providing that upon the formation of the limited liability company
10 the agreement will become the operating agreement. One person
11 intending to become the initial member of a limited liability
12 company may assent to terms providing that upon the formation
13 of the limited liability company the terms will become the operating
14 agreement.

15 17701.12. (a) An operating agreement may specify that its
16 amendment requires the approval of a person that is not a party to
17 the operating agreement or the satisfaction of a condition. An
18 amendment is ineffective if its adoption does not include the
19 required approval or satisfy the specified condition.

20 (b) The obligations of a limited liability company and its
21 members to a person in the person's capacity as a transferee or
22 dissociated member are governed by the operating agreement.
23 Subject only to any court order issued under paragraph (2) of
24 subdivision (b) of Section 17705.03 to effectuate a charging order,
25 an amendment to the operating agreement made after a person
26 becomes a transferee or dissociated member is effective with regard
27 to any debt, obligation, or other liability of the limited liability
28 company or its members to the person in the person's capacity as
29 a transferee or dissociated member.

30 (c) If a record that has been delivered by a limited liability
31 company to the Secretary of State for filing and has become
32 effective under this title contains a provision that would be
33 ineffective under subdivision (c) of Section 17701.10 if contained
34 in the operating agreement, the provision is likewise ineffective
35 in the record.

36 (d) Subject to subdivision (c), if a record that has been delivered
37 by a limited liability company to the Secretary of State for filing
38 and has become effective under this title conflicts with a provision
39 of the operating agreement both of the following apply:

1 (1) The operating agreement prevails as to members, dissociated
2 members, transferees, and managers.

3 (2) The record prevails as to other persons to the extent they
4 reasonably rely on the record.

5 17701.13. (a) A limited liability company shall designate and
6 continuously maintain in this state both of the following:

7 (1) An office, which need not be a place of its activity in this
8 state.

9 (2) An agent for service of process.

10 (b) A foreign limited liability company that has a certificate of
11 registration under Section 17708.02 shall designate and
12 continuously maintain in this state an agent for service of process.

13 (c) An agent for service of process of a limited liability company
14 or foreign limited liability company shall be an individual who is
15 a resident of this state or ~~other person with authority to transact~~
16 ~~business in this state, or if the designated person is a corporation,~~
17 ~~any person named in the latest certificate of the corporate agent~~
18 ~~filed pursuant to Section 1505 at the office of the corporate agent~~
19 *a corporation that has complied with Section 1505 and whose*
20 *capacity to act as an agent has not terminated.*

21 (d) *Each limited liability company shall maintain in writing or*
22 *in any other form capable of being converted into clearly legible*
23 *tangible form at the office referred to in subdivision (a) all of the*
24 *following:*

25 (1) *A current list of the full name and last known business or*
26 *residence address of each member and of each holder of a*
27 *transferable interest in the limited liability company set forth in*
28 *alphabetical order, together with the contribution and the share*
29 *in profits and losses of each member and holder of a transferable*
30 *interest.*

31 (2) *If the limited liability company is a manager-managed*
32 *limited liability company, a current list of the full name and*
33 *business or residence address of each manager.*

34 (3) *A copy of the articles of organization and all amendments*
35 *thereto, together with any powers of attorney pursuant to which*
36 *the articles of organization or any amendments thereto were*
37 *executed.*

38 (4) *Copies of the limited liability company's federal, state, and*
39 *local income tax or information returns and reports, if any, for*
40 *the six most recent fiscal years.*

1 (5) *A copy of the limited liability company's operating*
2 *agreement, if in writing, and any amendments thereto, together*
3 *with any powers of attorney pursuant to which any written*
4 *operating agreement or any amendments thereto were executed.*

5 (6) *Copies of the financial statement of the limited liability*
6 *company, if any, for the six most recent fiscal years.*

7 (7) *The books and records of the limited liability company as*
8 *they relate to the internal affairs of the limited liability company*
9 *for at least the current and past four fiscal years.*

10 (e) *Upon request of an assessor, a domestic or foreign limited*
11 *liability company owning, claiming, possessing, or controlling*
12 *property in this state subject to local assessment shall make*
13 *available at the limited liability company's principal office in this*
14 *state or at the office required to be kept pursuant to subdivision*
15 *(a) or at a place mutually acceptable to the assessor and the limited*
16 *liability company a true copy of the business records relevant to*
17 *the amount, cost, and value of all property that the limited liability*
18 *company owns, claims, possesses, or controls within the county.*

19 17701.14. (a) A limited liability company or foreign limited
20 liability company may change its designated office, its agent for
21 service of process, or the address of its agent for service of process
22 by delivering to the Secretary of State for filing a statement of
23 information as set forth in Section 17702.09.

24 (b) Subject to subdivision (c) of Section 17702.05, a statement
25 of information is effective when filed by the Secretary of State.

26 17701.15. (a) To resign as an agent for service of process of
27 a limited liability company or foreign limited liability company,
28 the agent shall deliver to the Secretary of State for filing a signed
29 and acknowledged statement of resignation containing the limited
30 liability company name and stating that the agent is resigning.

31 (b) The Secretary of State shall file a statement of resignation
32 delivered under subdivision (a) and mail or otherwise provide or
33 deliver a copy to the designated office of the limited liability
34 company or foreign limited liability company and another copy
35 to the principal office of the limited liability company if the mailing
36 address of the principal office appears in the records of the
37 Secretary of State and is different from the mailing address of the
38 designated office.

39 (c) An agency for service of process terminates on the earlier
40 of the following:

1 (1) The 31st day after the Secretary of State files the statement
2 of resignation.

3 (2) When a record designating a new agent for service of process
4 is delivered to the Secretary of State for filing on behalf of the
5 limited liability company and becomes effective.

6 17701.16. (a) An agent for service of process appointed by a
7 limited liability company or foreign limited liability company is
8 an agent of the limited liability company for service of any process,
9 notice, or demand required or permitted by law to be served on
10 the limited liability company.

11 (b) (1) If an agent for service of process has resigned and has
12 not been replaced or if the designated agent cannot with reasonable
13 diligence be found at the address designated for personal delivery
14 of the process, and it is shown by affidavit to the satisfaction of
15 the court that process against a limited liability company or foreign
16 limited liability company cannot be served with reasonable
17 diligence upon the designated agent by hand in the manner
18 provided in Section 415.10, subdivision (a) of Section 415.20, or
19 subdivision (a) of Section 415.30 of the Code of Civil Procedure,
20 the court may make an order that the service shall be made upon
21 a domestic limited liability company or upon a registered foreign
22 limited liability company by delivering by hand to the Secretary
23 of State, or to any person employed in the Secretary of State's
24 office in the capacity of assistant or deputy, one copy of the process
25 for each defendant to be served, together with a copy of the order
26 authorizing the service. Service in this manner shall be deemed
27 complete on the 10th day after delivery of the process to the
28 Secretary of State.

29 (2) Upon receipt of the copy of process and the fee therefor, the
30 Secretary of State shall give notice of the service of the process to
31 the limited liability company or foreign limited liability company,
32 at its principal executive office, by forwarding to that office, by
33 registered mail with request for return receipt, the copy of the
34 process.

35 (3) The Secretary of State shall keep a record of all process
36 served upon the Secretary of State under this title and shall record
37 therein the time of service and the action taken by the Secretary
38 of State. A certificate under the Secretary of State's official seal,
39 certifying to the receipt of process, the giving of notice to the
40 limited liability company or foreign limited liability company, and

1 the forwarding of the process pursuant to this section, shall be
2 competent and prima facie evidence of the service of process.

3 (c) Service of any process, notice, or demand on the Secretary
4 of State as an agent for a limited liability company or foreign
5 limited liability company may be made by delivering to the
6 Secretary of State duplicate copies of the process, notice, or
7 demand. If a process, notice, or demand is served on the Secretary
8 of State, the Secretary of State shall forward one of the copies by
9 registered or certified mail, return receipt requested, to the limited
10 liability company at its designated office.

11 (d) Service is effected under subdivision (c) at the earliest of
12 the following:

13 (1) The date the limited liability company or foreign limited
14 liability company receives the process, notice, or demand.

15 (2) The date shown on the return receipt, if signed on behalf of
16 the limited liability company.

17 (3) Five days after the process, notice, or demand is deposited
18 with the United States Postal Service, if correctly addressed and
19 with sufficient postage.

20 (e) The Secretary of State shall keep a record of each process,
21 notice, and demand served pursuant to this section and record the
22 time of, and the action taken regarding, the service.

23 (f) This section does not affect the right to serve process, notice,
24 or demand in any other manner provided by law.

25 17701.17. (a) A member may, in a written operating agreement
26 or other writing, consent to be subject to the nonexclusive
27 jurisdiction of the courts of a specified jurisdiction, or the exclusive
28 jurisdiction of the courts of this state.

29 (b) If a member desires to use the arbitration process, that
30 member may, in a written operating agreement or other writing,
31 consent to be nonexclusively subject to arbitration in a specified
32 state, or to be exclusively subject to arbitration in this state.

33 (c) Along with this consent to the jurisdiction of courts or
34 arbitration, a member may consent to be served with legal process
35 in the manner prescribed in the operating agreement or other
36 writing.

1 Article 2. Formation: Articles of Organization and Other Filings

2
3 17702.01. (a) One or more persons may act as organizers to
4 form a limited liability company by signing and delivering to the
5 Secretary of State for filing articles of organization on a form
6 prescribed by the Secretary of State.

7 (b) Articles of organization shall state all of the following:

8 (1) The name of the limited liability company, which shall
9 comply with Section 17701.08.

10 (2) The street and mailing addresses of the initial designated
11 office and the name and the street and mailing addresses of the
12 initial agent for service of process of the limited liability company.

13 ~~(3) If the limited liability company will have one or more~~
14 ~~designated series of assets subject to limitations on liabilities, a~~
15 ~~statement to that effect.~~

16 (c) Subject to subdivision (c) of Section 17701.12, articles of
17 organization may also contain statements as to matters other than
18 those required by subdivision (b).

19 (d) A limited liability company is formed when the Secretary
20 of State has filed the articles of organization and the limited
21 liability company has at least one member.

22 (e) Except in a proceeding by this state to dissolve a limited
23 liability company, the filing of the articles of organization by the
24 Secretary of State is conclusive proof that the organizer satisfied
25 all conditions to the formation of a limited liability company.

26 *(f) The Secretary of State shall include with the instructional*
27 *materials, provided in conjunction with the form for filing articles*
28 *of organization under subdivision (a), a notice that filing the*
29 *registration will obligate the limited liability company to pay an*
30 *annual tax for that taxable year to the Franchise Tax Board*
31 *pursuant to Section 17941 of the Revenue and Taxation Code. That*
32 *notice shall be updated annually to specify the dollar amount of*
33 *the tax.*

34 17702.02. (a) The articles of organization may be amended
35 or restated at any time.

36 (b) To amend its articles of organization, a limited liability
37 company shall deliver to the Secretary of State for filing an
38 amendment stating all of the following:

39 (1) The name of the limited liability company.

40 (2) The date of filing of its articles of organization.

1 (3) The changes the amendment makes to the articles as most
2 recently amended or restated.

3 (c) To restate its articles of organization, a limited liability
4 company shall deliver to the Secretary of State for filing a
5 restatement, designated as such in its heading, stating, as
6 applicable, the following:

7 (1) In the heading or an introductory paragraph, the limited
8 liability company's present name and the date of the filing of the
9 limited liability company's initial articles of organization.

10 (2) If the limited liability company's name has been changed
11 at any time since the limited liability company's formation, each
12 of the limited liability company's former names.

13 (3) The changes the restatement makes to the articles as most
14 recently amended or restated.

15 (d) Subject to subdivision (c) of Section 17701.12 and
16 subdivision (c) of Section 17702.05, an amendment to or
17 restatement of the articles of organization is effective when filed
18 by the Secretary of State.

19 (e) If a member of a member-managed limited liability company,
20 or a manager of a manager-managed limited liability company,
21 knows that any information in a filed articles of organization was
22 inaccurate when the articles were filed or has become inaccurate
23 owing to changed circumstances, the member or manager shall
24 promptly do the following:

25 (1) Cause the articles to be amended.

26 (2) If appropriate, deliver to the Secretary of State for filing a
27 ~~statement~~ *certificate* of information under Section 17701.14 or a
28 statement of correction under Section 17702.06.

29 17702.03. (a) A record delivered to the Secretary of State for
30 filing pursuant to this title shall be signed as follows:

31 (1) Except as otherwise provided in paragraphs (2) ~~to (4)~~;
32 ~~inclusive and (3)~~, a record signed on behalf of a limited liability
33 company shall be signed by a person authorized by the limited
34 liability company.

35 (2) A limited liability company's initial articles of organization
36 shall be signed by at least one person acting as an organizer.

37 ~~(3) A notice under paragraph (1) of subdivision (c) of Section~~
38 ~~17702.01 shall be signed by an organizer.~~

39 ~~(4)~~

1 (3) A record filed on behalf of a dissolved limited liability
2 company that has no members shall be signed by the person
3 winding up the limited liability company's activities or a person
4 appointed under Section 17707.04 to wind up those activities.

5 ~~(5)~~

6 (4) A ~~statement~~ *certificate* of cancellation under ~~paragraph (2)~~
7 ~~of subdivision (d) of Section 17702.01~~ 17707.02 shall be signed
8 by each organizer that signed the initial articles of organization,
9 but a personal representative of a deceased or incompetent
10 organizer may sign in the place of the decedent or incompetent.

11 (b) Any record filed under this title may be signed by an agent.

12 (c) A limited liability company may record in the office of the
13 county recorder of any county in this state, and county recorders,
14 on request, shall record a certified copy of the limited liability
15 company articles of organization and any exhibit or attachment,
16 or any amendment or correction thereto, that has been filed in the
17 office of the Secretary of State. A foreign limited liability company
18 may record in the office of the county recorder of any county in
19 the state a certified copy of the limited liability company certificate
20 of registration, or any amendment thereto, that has been filed in
21 the office of the Secretary of State. The recording shall create a
22 conclusive presumption in favor of any bona fide purchaser or
23 encumbrancer for value of the limited liability company real
24 property located in the county in which the certified copy has been
25 recorded, of the statements contained therein.

26 (d) If the Secretary of State determines that an instrument
27 submitted for filing or otherwise submitted does not conform to
28 the law and returns it to the person submitting it, the instrument
29 may be resubmitted accompanied by a written opinion of a member
30 of the State Bar of California submitting the instrument or
31 representing the person submitting it, to the effect that the specific
32 provisions of the instrument objected to by the Secretary of State
33 do conform to law and stating the points and authorities upon
34 which the opinion is based. The Secretary of State shall rely, with
35 respect to any disputed point of law, other than the application of
36 Sections 17701.08, 17701.09, 17708.02, and 17708.03, upon that
37 written opinion in determining whether the instrument conforms
38 to law. The date of filing in that case shall be the date the
39 instrument is received on resubmission.

1 17702.04. (a) If a person required by this title to sign a record
2 or deliver a record to the Secretary of State for filing under this
3 title does not do so, any other person that is aggrieved may petition
4 the superior court to order any of the following:

- 5 (1) The person to sign the record.
- 6 (2) The person to deliver the record to the Secretary of State for
7 filing.
- 8 (3) The Secretary of State to file the record unsigned.

9 (b) If a petitioner under subdivision (a) is not the limited liability
10 company or foreign limited liability company to which the record
11 pertains, the petitioner shall make the limited liability company a
12 party to the action.

13 17702.05. (a) A record authorized or required to be delivered
14 to the Secretary of State for filing under this title shall be captioned
15 to describe the record's purpose, be in a medium permitted by the
16 Secretary of State, and be delivered to the Secretary of State. If
17 the filing fees have been paid, unless the Secretary of State
18 determines that a record does not comply with the filing
19 requirements of this title, the Secretary of State shall file the record
20 and send a copy of the filed record and a receipt for the fees to the
21 person on whose behalf the record was filed.

22 (b) Upon request and payment of the requisite fee, the Secretary
23 of State shall send to the requester a certified copy of a requested
24 record.

25 (c) Except as otherwise provided in Sections 17701.15 and
26 17702.06, a record delivered to the Secretary of State for filing
27 under this title may specify a delayed effective date. Subject to
28 ~~Section Sections~~ 17701.15, ~~paragraph (1) of subdivision (d) of~~
29 ~~Section 17702.01~~, and ~~Section~~ 17702.06, a record filed by the
30 Secretary of State is effective as follows:

31 (1) If the record does not specify a delayed effective date, on
32 the date the record is filed as evidenced by the Secretary of State's
33 endorsement of the date on the record.

34 (2) If the record specifies a delayed effective date, on the earlier
35 of the following:

- 36 (A) The specified date.
- 37 (B) The 90th day after the record is filed.

38 17702.06. (a) A limited liability company or foreign limited
39 liability company may deliver to the Secretary of State for filing
40 a certificate of correction on a form prescribed by the Secretary

1 of State to correct a record previously delivered by the limited
2 liability company to the Secretary of State and filed by the
3 Secretary of State, if at the time of filing the record contained
4 inaccurate information or was defectively signed.

5 (b) A certificate of correction under subdivision (a) may not
6 state a delayed effective date and shall do all of the following:

7 (1) Describe the record to be corrected, including its filing date,
8 or attach a copy of the record as filed.

9 (2) Specify the inaccurate information and the reason it is
10 inaccurate or the manner in which the signing was defective.

11 (3) Correct the defective signature or inaccurate information.

12 (c) When filed by the Secretary of State, a certificate of
13 correction under subdivision (a) is effective retroactively as of the
14 effective date of the record the certificate corrects, but the statement
15 is effective when filed: ~~(1) For the purposes of subdivision (d)~~
16 ~~of Section 17701.03. (2) As to persons that previously relied~~
17 ~~on the uncorrected record and would be adversely affected by the~~
18 ~~retroactive effect.~~

19 17702.07. (a) If a record delivered to the Secretary of State
20 for filing under this title and filed by the Secretary of State contains
21 inaccurate information, a person that suffers a loss by reliance on
22 the information may recover damages for the loss as follows:

23 (1) A person that signed the record, or caused another to sign
24 it on the person's behalf, and knew the information to be inaccurate
25 at the time the record was signed.

26 (2) Subject to subdivision (b), a member of a member-managed
27 limited liability company or the manager of a manager-managed
28 limited liability company, if all of the following apply:

29 (A) The record was delivered for filing on behalf of the limited
30 liability company.

31 (B) The member or manager had notice of the inaccuracy for a
32 reasonably sufficient time before the information was relied upon
33 so that, before the reliance, the member or manager reasonably
34 could have done all of the following:

35 (i) Effected an amendment under Section 17702.02.

36 (ii) Filed a petition under Section 17702.04.

37 (iii) Delivered to the Secretary of State for filing a statement of
38 information under Section 17701.14 or a certificate of correction
39 under Section 17702.06.

1 (b) To the extent that the operating agreement of a
2 member-managed limited liability company expressly relieves a
3 member of responsibility for maintaining the accuracy of
4 information contained in records delivered on behalf of the limited
5 liability company to the Secretary of State for filing under this title
6 and imposes that responsibility on one or more other members,
7 the liability stated in paragraph (2) of subdivision (a) applies to
8 those other members and not to the member that the operating
9 agreement relieves of the responsibility.

10 (c) An individual who signs a record authorized or required to
11 be filed under this title affirms under penalty of perjury that the
12 information stated in the record is accurate.

13 17702.08. The Secretary of State, upon request and payment
14 of the requisite fee, shall furnish to any person a certificate of status
15 for a limited liability company if the records filed in the office of
16 the Secretary of State show that the limited liability company has
17 been formed under Section 17702.01 and the Secretary of State
18 has not filed a certificate of dissolution under Section 17707.08
19 pertaining to the limited liability company.

20 17702.09. (a) Every limited liability company and every
21 foreign limited liability company registered to transact intrastate
22 business in this state shall deliver to the Secretary of State for filing
23 within 90 days after the filing of its original articles of organization
24 and biennially thereafter during the applicable filing period, on a
25 form prescribed by the Secretary of State, a statement of
26 information containing:

27 (1) The name of the limited liability company and the Secretary
28 of State's file number and, in the case of a foreign limited liability
29 company, the state under the laws of which it is organized.

30 (2) The name and address of the agent in this state for service
31 of process required to be maintained pursuant to Section 17701.13.
32 If a corporate agent is designated, only the name of the agent shall
33 be set forth.

34 (3) The street address of its principal executive office and, in
35 the case of a domestic limited liability company, of the office
36 required to be maintained pursuant to Section 17701.13.

37 (4) The mailing address of the limited liability company, if
38 different from the street address of its ~~principle~~ *principal* executive
39 office.

1 (5) The name and complete business or residence addresses of
2 any manager or managers and the chief executive officer, if any,
3 appointed or elected in accordance with the articles of organization
4 or operating agreement or, if no manager has been so elected or
5 appointed, the name and business or residence address of each
6 member.

7 (6) If the limited liability company chooses to receive renewal
8 notices and any other notifications from the Secretary of State by
9 electronic mail instead of by United States mail, the limited liability
10 company shall include a valid electronic mail address for the
11 limited liability company or for the limited liability company's
12 designee to receive those notices.

13 (7) The general type of business that constitutes the principal
14 business activity or the limited liability company, such as, for
15 example, manufacture of aircraft, wholesale liquor distributor, or
16 retail department store.

17 (b) If there has been no change in the information contained in
18 the last filed statement of information of the limited liability
19 company on file in the office of Secretary of State, the limited
20 liability company may, in lieu of filing the statement of information
21 required by subdivision (a), advise the Secretary of State, on a
22 form prescribed by the Secretary of State, that no changes in the
23 required information have occurred during the applicable filing
24 period.

25 (c) For purposes of this section, the applicable filing period for
26 a limited liability company shall be the calendar month during
27 which its original articles of organization was filed or, in the case
28 of a foreign limited liability company, the month during which its
29 application for registration was filed, and the immediately
30 preceding five calendar months. The Secretary of State shall
31 provide a notice to each limited liability company to comply with
32 this section approximately three months prior to the close of the
33 applicable filing period. The notice shall state the due date for
34 compliance and shall be sent to the last address of the limited
35 liability company according to the records of the Secretary of State
36 or to the last electronic mail address according to the records of
37 the Secretary of State if the limited liability company has elected
38 to receive notices from the Secretary of State by electronic mail.
39 The failure of the limited liability company to receive the notice

1 shall not exempt the limited liability company from complying
2 with this section.

3 (d) Whenever any of the information required by subdivision
4 (a) changes, other than the name and address of the agent for
5 service of process, the limited liability company may file a current
6 statement containing all the information required by subdivision
7 (a). When changing its agent for service of process or when the
8 address of the agent changes, the limited liability company shall
9 file a current statement containing all the information required by
10 subdivision (a). Whenever any statement is filed pursuant to this
11 section changing the name and address of the agent for service of
12 process, that statement supersedes any previously filed statement
13 pursuant to this section, the statement in the original articles of
14 organization, and the statement in any restated articles of
15 organization that have been filed, or in the case of a foreign limited
16 liability company, in the application for registration. Whenever
17 restated articles of organization are filed, the statement therein, if
18 any, of the name and address of the agent for service of process
19 supersedes any previously filed statement pursuant to this section.

20 (e) If a statement of information delivered to the Secretary of
21 State for filing under this section does not contain the information
22 required by subdivision (a), the Secretary of State shall promptly
23 return the statement of information to the reporting limited liability
24 company or foreign limited liability company for correction.

25 (f) The Secretary of State may destroy or otherwise dispose of
26 any statement filed pursuant to this section after it has been
27 superseded by the filing of a new statement.

28 17702.10. An instrument shall be deemed filed, and the date
29 of filing endorsed thereon, upon receipt by the Secretary of State
30 of any instrument accompanied by the fee prescribed by the
31 Secretary of State. The date of filing shall be the date the
32 instrument is received by the Secretary of State unless the
33 instrument is withheld from filing for a period of time not to exceed
34 90 days pursuant to a request by the party submitting it for filing
35 or unless, in the judgment of the Secretary of State, the filing is
36 intended to be coordinated with the filing of some other document
37 that cannot be filed. The Secretary of State shall file a document
38 as of any requested future date not more than 90 days after its
39 receipt, including a Saturday, Sunday, or legal holiday, if that
40 document is received in the office of the Secretary of State at least

1 one business day prior to the requested date of filing. Upon receipt
2 and after filing of any document under this title, the Secretary of
3 State may microfilm or reproduce by other techniques any filings
4 or documents and destroy the original filing or document. The
5 microfilm or other reproduction of any document under the
6 provision of this section shall be admissible in any court of law.

7
8 Article 3. Relations of Members and Managers to Persons
9 Dealing with a Limited Liability Company

10
11 ~~17703.01. (a) A member is not an agent of a limited liability~~
12 ~~company solely by reason of being a member.~~

13 ~~(b) A person's status as a member does not prevent or restrict~~
14 ~~law other than this title from imposing liability on a limited liability~~
15 ~~company because of the person's conduct.~~

16 *17703.01. (a) Unless the articles of organization indicate the*
17 *limited liability company is a manager-managed limited liability*
18 *company, every member is an agent of the limited liability company*
19 *for the purpose of its business or affairs, and the act of any*
20 *member, including, but not limited to, the execution in the name*
21 *of the limited liability company of any instrument, for the apparent*
22 *purpose of carrying on in the usual way the business or affairs of*
23 *the limited liability company of which that person is a member,*
24 *binds the limited liability company in the particular matter, unless*
25 *the member so acting has, in fact, no authority to act for the limited*
26 *liability company in the particular matter and the person with*
27 *whom the member is dealing has actual knowledge of the fact that*
28 *the member has no such authority.*

29 *(b) If the articles of organization indicate that the limited*
30 *liability company is manager-managed limited liability company,*
31 *each of the following applies:*

32 *(1) No member acting solely in the capacity of a member is an*
33 *agent of the limited liability company nor can any member bind*
34 *or execute any instrument on behalf of the limited liability*
35 *company.*

36 *(2) Every manager is an agent of the limited liability company*
37 *for the purpose of its business or affairs, and the act of any*
38 *manager, including, but not limited to, the execution in the name*
39 *of the limited liability company of any instrument for apparently*
40 *carrying on in the usual way the business or affairs of the limited*

1 *liability company of which the person is a manager, binds the*
2 *limited liability company, unless the manager so acting has, in*
3 *fact, no authority to act for the limited liability company in the*
4 *particular matter and the person with whom the manager is dealing*
5 *has actual knowledge of the fact that the manager has no such*
6 *authority.*

7 *(c) No act of a manager or member in contravention of a*
8 *restriction on authority shall bind the limited liability company to*
9 *persons having actual knowledge of the restriction.*

10 *(d) Notwithstanding the provisions of subdivision (c), any note,*
11 *mortgage, evidence of indebtedness, contract, certificate, statement,*
12 *conveyance, or other instrument in writing, and any assignment*
13 *or endorsement thereof, executed or entered into between any*
14 *limited liability company and any other person, when signed by*
15 *at least two managers, or by one manager in the case of a limited*
16 *liability company whose articles of organization state that it is*
17 *managed by only one manager, is not invalidated as to the limited*
18 *liability company by any lack of authority of the signing managers*
19 *or manager in the absence of actual knowledge on the part of the*
20 *other person that the signing managers or manager had no*
21 *authority to execute the same.*

22 17703.04. (a) All of the following apply to debts, obligations,
23 or other liabilities of a limited liability company, ~~or a series of a~~
24 ~~limited liability company~~, whether arising in contract, tort, or
25 otherwise:

26 (1) They are solely the debts, obligations, or other liabilities of
27 the limited liability company, ~~or of the series of a limited liability~~
28 ~~company~~ to which the debts, obligations, or other liabilities relate.

29 (2) They do not become the debts, obligations, or other liabilities
30 of a member or manager ~~or any other series~~ solely by reason of
31 the member acting as a member or manager acting as a manager
32 for the limited liability company ~~or a series of a limited liability~~
33 ~~company~~.

34 (b) A member of a limited liability company ~~or a series of a~~
35 ~~limited liability company~~ shall be subject to liability under the
36 common law governing alter ego liability, and shall also be
37 personally liable under a judgment of a court or for any debt,
38 obligation, or liability of the limited liability company ~~or a series~~
39 ~~of a limited liability company~~, whether that liability or obligation
40 arises in contract, tort, or otherwise, under the same or similar

1 circumstances and to the same extent as a shareholder of a
2 corporation may be personally liable for any debt, obligation, or
3 liability of the corporation; except that the failure to hold meetings
4 of members or managers or the failure to observe formalities
5 pertaining to the calling or conduct of meetings shall not be
6 considered a factor tending to establish that a member or the
7 members have alter ego or personal liability for any debt,
8 obligation, or liability of the limited liability company ~~or a series~~
9 ~~of a limited liability company~~ where the articles of organization
10 or operating agreement do not expressly require the holding of
11 meetings of members or managers.

12 (c) Nothing in this section shall be construed to affect the
13 liability of a member of a limited liability company ~~or a series of~~
14 ~~a limited liability company~~ to third parties for the member's
15 participation in tortious conduct, or pursuant to the terms of a
16 written guarantee or other contractual obligation entered into by
17 the member, other than an operating agreement.

18 (d) A limited liability company or foreign limited liability
19 company ~~or a series of a limited liability company~~ shall carry
20 insurance or provide an undertaking to the same extent and in the
21 same amount as is required by any law, rule, or regulation of this
22 state that would be applicable to the limited liability company or
23 foreign limited liability company ~~or a series of a limited liability~~
24 ~~company~~ were it a corporation organized and existing or duly
25 qualified for the transaction of intrastate business under the General
26 Corporation Law.

27 (e) Notwithstanding subdivision (a), a member of a limited
28 liability company ~~or a series of a limited liability company~~ may
29 agree to be obligated personally for any or all of the debts,
30 obligations, and liabilities of the limited liability company ~~or a~~
31 ~~series of a limited liability company~~ as long as the agreement to
32 be so obligated is set forth in the articles of organization or in a
33 written operating agreement that specifically references this
34 subdivision.

35
36 Article 4. Relations of Members to Each Other and to Limited
37 Liability Company
38

39 17704.01. (a) If a limited liability company is to have only
40 one member upon formation, the person becomes a member as

1 agreed by that person and the organizer of the limited liability
2 company. That person and the organizer may be, but need not be,
3 different persons. If different, the organizer acts on behalf of the
4 initial member.

5 (b) If a limited liability company, ~~or a series thereof~~, is to have
6 more than one member upon formation, those persons become
7 members as agreed by the persons before the formation of the
8 limited liability company. The organizer acts on behalf of the
9 persons in forming the limited liability company and may be, but
10 need not be, one of the persons.

11 (c) After formation of a limited liability company, a person
12 becomes a member as follows:

13 (1) As provided in the operating agreement.

14 (2) As the result of a transaction effective under Article 10
15 (commencing with Section 17710.01).

16 (3) With the consent of all the members.

17 (4) If, within 90 consecutive days after the limited liability
18 company ceases to have any members, the last person to have been
19 a member, or the legal representative of that person, designates a
20 person to become a member, and the designated person consents
21 to become a member.

22 (d) A person may become a member without acquiring a
23 transferable interest and without making or being obligated to
24 make a contribution to the limited liability company.

25 (e) A person may be admitted as the sole member without
26 acquiring a membership interest and without making or being
27 obligated to make a contribution to the limited liability company.

28 17704.02. A contribution may consist of tangible or intangible
29 property or other benefit to a limited liability company, ~~or a series~~
30 ~~of a limited liability company~~, including money, services
31 performed, promissory notes, other agreements to contribute money
32 or property, and contracts for services to be performed.

33 17704.03. (a) A person's obligation to make a contribution to
34 a limited liability company, ~~or a series of a limited liability~~
35 ~~company~~, is not excused by the person's death, disability, or other
36 inability to perform personally. If a person does not make a
37 required contribution, the person or the person's estate is obligated
38 to contribute money equal to the value of the part of the
39 contribution that has not been made, at the option of the limited
40 liability company ~~or a series of a limited liability company~~.

(b) The obligation of a member to make a contribution to a limited liability company may be compromised only by consent of all the members. A conditional obligation of a member to make a contribution to a limited liability company shall not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company before the time the call occurs.

~~(c) The obligation of a member of a series to make a contribution to the series may be compromised only by consent of all the members of that series. A conditional obligation of a member to make a contribution to a series shall not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of that series before the time the call occurs.~~

~~(d) Subdivision (b) shall not apply to a member's obligation to make a contribution to a series of a limited liability company.~~

~~(e)~~

~~(c) A creditor of a limited liability company or a series of a limited liability company that extends credit or otherwise acts in reliance on an obligation described in subdivision (a) may enforce the obligation.~~

~~(d) Nothing in this section shall be construed to affect the rights of third-party creditors of the limited liability company to seek equitable remedies or any rights existing under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).~~

17704.04. (a) Any distributions made by a limited liability company before its dissolution and winding up shall be among the members in accordance with the operating agreement. If the operating agreement does not otherwise provide, distributions shall be on the basis of the value, as stated in the required records when the limited liability company decides to make the distribution, of the contributions the limited liability company has received from each member, except to the extent necessary to comply with any transfer effective under Section 17705.02 and any charging order in effect under Section 17705.03.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the limited

1 liability company decides to make an interim distribution. A
2 person's dissociation does not entitle the person to a distribution.

3 (c) A person does not have a right to demand or receive a
4 distribution from a limited liability company in any form other
5 than money. A limited liability company may distribute an asset
6 in kind if each part of the asset is fungible with each other part and
7 each person receives a percentage of the asset equal in value to
8 the person's share of distributions.

9 (d) If a member or transferee becomes entitled to receive a
10 distribution, the member or transferee has the status of, and is
11 entitled to all remedies available to, a creditor of the limited
12 liability company with respect to the distribution.

13 ~~(e) (1) All members of a series shall share equally in any~~
14 ~~distributions made by the series before its dissolution and winding~~
15 ~~up.~~

16 ~~(2) A member of a series has a right to a distribution before the~~
17 ~~dissolution and winding up of the series as provided in the~~
18 ~~operating agreement. A decision of the series to make a distribution~~
19 ~~before the dissolution and winding up of the series is a decision~~
20 ~~in the ordinary course of activities of the series. A member's~~
21 ~~dissociation from a series with which the member is associated~~
22 ~~does not entitle the dissociated member to a distribution from the~~
23 ~~series.~~

24 ~~(3) A member of a series does not have a right to demand and~~
25 ~~receive a distribution from the series in any form other than money.~~
26 ~~A series may distribute an asset in kind if each member of the~~
27 ~~series receives a percentage of the asset in proportion to the~~
28 ~~member's share of distributions from the series.~~

29 ~~(4) If a member of a series becomes entitled to receive a~~
30 ~~distribution from the series, the member has the status of, and is~~
31 ~~entitled to all remedies available to, a creditor of the series with~~
32 ~~respect to the distribution.~~

33 ~~(f) Subdivisions (a) through (d) shall not apply to a distribution~~
34 ~~made by a series.~~

35 17704.05. (a) A limited liability company shall not make a
36 distribution if after the distribution either of the following applies:

37 (1) The limited liability company would not be able to pay its
38 debts as they become due in the ordinary course of the limited
39 liability company's activities.

(2) The limited liability company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited liability company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subdivision (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subdivision (f), the effect of a distribution under subdivision (a) is measured as follows:

(1) In the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the limited liability company, as of the date money or other property is transferred or debt incurred by the limited liability company.

(2) In all other cases, as of the date the distribution is authorized, if the payment occurs within 120 days after that date, or the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors.

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subdivision (a) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subdivision ~~(a)~~ and subdivision (f) of Section 17701.02, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments

1 made in the ordinary course of business under a bona fide
2 retirement plan or other benefits program.

3 ~~(h) (1) A series shall not make a distribution to a member of~~
4 ~~the series to the extent that at the time of the distribution, after~~
5 ~~giving effect to the distribution, all liabilities of the series, other~~
6 ~~than liabilities to members of the series on account of their~~
7 ~~membership interests and liabilities for which the recourse of~~
8 ~~creditors is limited to specific property of the series, exceed the~~
9 ~~fair value of the assets of the series, except that the fair value of~~
10 ~~the property that is subject to a liability for which recourse of~~
11 ~~creditors is limited shall be included in the assets of the series only~~
12 ~~to the extent that the fair value of the property exceeds that liability.~~

13 ~~(2) A member of a series who receives a distribution in violation~~
14 ~~of paragraph (1) or the operating agreement, and who knew at the~~
15 ~~time of the distribution that the distribution violated paragraph (1)~~
16 ~~or the operating agreement, shall be personally liable to that series~~
17 ~~for the amount of the distribution. A member of a series who~~
18 ~~receives a distribution in violation of paragraph (1) or the limited~~
19 ~~liability company agreement, and who did not know at the time~~
20 ~~of the distribution that the distribution violated paragraph (1) or~~
21 ~~the operating agreement, shall not be liable for the amount of the~~
22 ~~distribution.~~

23 ~~(3) Subdivision (a) through (g) shall not apply to a distribution~~
24 ~~made by a series.~~

25 17704.06. (a) Except as otherwise provided in subdivision (b)
26 and paragraph (2) of subdivision (h) of Section 17704.05, if a
27 member of a member-managed limited liability company or
28 manager of a manager-managed limited liability company or a
29 series of limited liability company consents to a distribution made
30 in violation of Section 17704.05, the member or manager is
31 personally liable to the limited liability company, or, if applicable,
32 to the series of the limited liability company making the
33 distribution, for the amount of the distribution that exceeds the
34 amount that could have been distributed without the violation of
35 Section 17704.05.

36 (b) To the extent the operating agreement of a member-managed
37 limited liability company expressly relieves a member of the
38 authority and responsibility to consent to distributions and imposes
39 that authority and responsibility on one or more other members,
40 the liability stated in subdivision (a) applies to the other members

1 and not the member that the operating agreement relieves of
2 authority and responsibility.

3 (c) A person that receives a distribution knowing that the
4 distribution to that person was made in violation of Section
5 17704.05 is personally liable to the limited liability company but
6 only to the extent that the distribution received by the person
7 exceeded the amount that could have been properly paid under
8 Section 17704.05.

9 (d) A person against which an action is commenced because
10 the person is liable under subdivision (a) may do all of the
11 following:

12 (1) Implead any other person that is subject to liability under
13 subdivision (a) and seek to compel contribution from the person.

14 (2) Implead any person that received a distribution in violation
15 of subdivision (c) and seek to compel contribution from the person
16 in the amount the person received in violation of subdivision (c).

17 (e) An action under this section is barred if not commenced
18 within four years after the distribution.

19 17704.07. (a) A limited liability company is a
20 member-managed limited liability company unless the operating
21 agreement does either of the following:

22 (1) Expressly provides that:

23 (A) The limited liability company is or will be
24 “manager-managed.”

25 (B) The limited liability company is or will be “managed by
26 managers.”

27 (C) Management of the limited liability company is or will be
28 “vested in managers.”

29 (2) Includes words of similar import.

30 (b) In a member-managed limited liability company, the
31 following rules apply:

32 (1) The management and conduct of the limited liability
33 company are vested in the members.

34 ~~(2) The management and conduct of a series are vested in the~~
35 ~~members of that series.~~

36 ~~(3) Paragraph (1) shall not apply to the management and conduct~~
37 ~~of a series.~~

38 ~~(4)~~

39 (2) Each member has equal rights in the management and
40 conduct of the limited liability company’s activities.

1 ~~(5) Each member of a series has equal rights in the management~~
2 ~~and conduct of the series' activities.~~

3 ~~(6) Paragraph (4) shall not apply to the management and conduct~~
4 ~~of the series.~~

5 ~~(7)~~

6 (3) A difference arising among members as to a matter in the
7 ordinary course of the activities of the limited liability company
8 ~~or a series of the limited liability company~~ shall be decided by a
9 majority of the members of the limited liability company ~~or of the~~
10 ~~series in~~ which the difference among the members has arisen.

11 ~~(8)~~

12 (4) An act outside the ordinary course of the activities of the
13 limited liability company may be undertaken only with the consent
14 of all members.

15 ~~(9) An act outside the ordinary course of the activities of a series~~
16 ~~of the limited liability company may be undertaken only with the~~
17 ~~consent of all members of that series.~~

18 ~~(10)~~

19 (5) The operating agreement may be amended only with the
20 consent of all members.

21 (c) In a manager-managed limited liability company, the
22 following rules apply:

23 (1) Except as otherwise expressly provided in this title, any
24 matter relating to the activities of the limited liability company is
25 decided exclusively by the managers.

26 ~~(2) Except as otherwise expressly provided in this title, any~~
27 ~~matter related to the activity of the series is decided exclusively~~
28 ~~by the managers of the series.~~

29 ~~(3) Paragraph (1) shall not apply to the activities of a series.~~

30 ~~(4)~~

31 (2) Each manager has equal rights in the management and
32 conduct of the activities of the limited liability company.

33 ~~(5) Each manager of a series has equal rights in the management~~
34 ~~and conduct of the activity of the series.~~

35 ~~(6) Paragraph (4) shall not apply to the management and conduct~~
36 ~~of the activity of the series.~~

37 ~~(7)~~

38 (3) A difference arising among managers as to a matter in the
39 ordinary course of the activities of the limited liability company

1 may be decided by a majority of the managers of the limited
2 liability company.

3 ~~(8) A difference arising among managers of a series of a limited~~
4 ~~liability company as to a matter in the ordinary course of the~~
5 ~~activities of that series shall be decided by a majority of the~~
6 ~~managers of that series.~~

7 ~~(9)~~

8 (4) The consent of all members of the limited liability company
9 is required to do any of the following:

10 (A) Sell, lease, exchange, or otherwise dispose of all, or
11 substantially all, of the limited liability company's property, with
12 or without the goodwill, outside the ordinary course of the limited
13 liability company's activities.

14 (B) Approve a merger or conversion under Article 10
15 (commencing with Section 17710.01).

16 (C) Undertake any other act outside the ordinary course of the
17 limited liability company's activities.

18 (D) Amend the operating agreement.

19 ~~(10) The consent of all members of a series is required to any~~
20 ~~of the following:~~

21 ~~(A) Sell, lease, exchange, or afterward dispose of all or~~
22 ~~substantially all, of the series' property, with or without the~~
23 ~~goodwill, outside the ordinary course of the series activities.~~

24 ~~(B) Approve a merger or conversion of the series under Article~~
25 ~~10 (commencing with Section 17710.01).~~

26 ~~(C) Undertake any other act outside the ordinary course of the~~
27 ~~series' activities.~~

28 ~~(D) Amend the operating agreement with respect to the series.~~

29 ~~(11)~~

30 (5) A manager may be chosen at any time by the consent of a
31 majority of the members and remains a manager until a successor
32 has been chosen, unless the manager at an earlier time resigns, is
33 removed, or dies, or, in the case of a manager that is not an
34 individual, terminates. A manager may be removed at any time by
35 the consent of a majority of the members without notice or cause.

36 ~~(12) A manager of a series may be chosen at any time by the~~
37 ~~consent of a majority of members of that series and remains a~~
38 ~~manager until a successor has been chosen, unless the manager at~~
39 ~~an earlier time resigns, is removed, or dies, or in the case of a~~
40 ~~manager that is not an individual, terminates. A manager of a series~~

1 ~~may be removed at any time by the consent of a majority of the~~
2 ~~members of that series without notice or cause.~~

3 ~~(13)~~

4 (6) A person need not be a member to be a manager, but the
5 dissociation of a member that is also a manager removes the person
6 as a manager. If a person that is both a manager and a member
7 ceases to be a manager, that cessation does not by itself dissociate
8 the person as a member.

9 ~~(14)~~

10 (7) A person's ceasing to be a manager does not discharge any
11 debt, obligation, or other liability to the limited liability company
12 or members which the person incurred while a manager.

13 (d) The dissolution of a limited liability company, ~~or a series~~
14 ~~of a limited liability company,~~ does not affect the applicability of
15 this section. However, a person that wrongfully causes dissolution
16 of the limited liability company loses the right to participate in
17 management as a member and a manager.

18 (e) This title does not entitle a member to remuneration for
19 services performed for a member-managed limited liability
20 company, except for reasonable compensation for services rendered
21 in winding up the activities of a limited liability company.

22 (f) Meetings of members may be held at any place, by electronic
23 video screen communication or by electronic transmission by and
24 to the limited liability company pursuant to paragraphs (1) and (2)
25 of subdivision ~~(h)~~ (i) of Section 17701.02, either within or without
26 this state, selected by the person or persons calling the meeting or
27 as may be stated in or fixed in accordance with the articles of
28 organization or a written operating agreement. If no other place is
29 stated or so fixed, all meetings shall be held at the principal
30 executive office of the limited liability company. Unless prohibited
31 by the articles of organization of the limited liability company, if
32 authorized by the operating agreement, members not physically
33 present in person or by proxy at a meeting of members may, by
34 electronic transmission by and to the limited liability company
35 pursuant to paragraphs (1) and (2) of subdivision (i) of Section
36 17701.02 or by electronic video screen communication, participate
37 in a meeting of members, be deemed present in person or by proxy,
38 and vote at a meeting of members whether that meeting is to be
39 held at a designated place or in whole or in part by means of
40 electronic transmission by and to the limited liability company or

1 by electronic video screen communication, in accordance with
2 subdivision (l).

3 (g) A meeting of the members may be called by any manager
4 or by any member or members representing more than 10 percent
5 of the interests of members for the purpose of addressing any
6 matters on which the members may vote.

7 (h) (1) Whenever members are required or permitted to take
8 any action at a meeting, a written notice of the meeting shall be
9 given not less than 10 days nor more than 60 days before the date
10 of the meeting to each member entitled to vote at the meeting. The
11 notice shall state the place, date, and hour of the meeting, the means
12 of electronic transmission by and to the limited liability company
13 or electronic video screen communication, if any, and the general
14 nature of the business to be transacted. No other business may be
15 transacted at that meeting.

16 (2) Any report or any notice of a members' meeting shall be
17 given personally, by electronic transmission by the limited liability
18 company, or by mail or other means of written communication,
19 addressed to the member at the address of the member appearing
20 on the books of the limited liability company or given by the
21 member to the limited liability company for the purpose of notice,
22 or, if no address appears or is given, at the place where the principal
23 executive office of the limited liability company is located or by
24 publication at least once in a newspaper of general circulation in
25 the county in which the principal executive office is located. The
26 notice or report shall be deemed to have been given at the time
27 when delivered personally, delivered by electronic transmission
28 by the limited liability company, deposited in the mail, or sent by
29 other means of written communication. An affidavit of mailing or
30 delivered by electronic transmission by the limited liability
31 company of any notice or report in accordance with this article,
32 executed by a manager, shall be prima facie evidence of the giving
33 of the notice or report.

34 (3) If any notice or report addressed to the member at the address
35 of the member appearing on the books of the limited liability
36 company is returned to the limited liability company by the United
37 States Postal Service marked to indicate that the United States
38 Postal Service is unable to deliver the notice or report to the
39 member at the address, all future notices or reports shall be deemed
40 to have been duly given without further mailing if they are

1 available for the member at the principal executive office of the
2 limited liability company for a period of one year from the date
3 of the giving of the notice or report to all other members.

4 (4) Notice given by electronic transmission by the limited
5 liability company under this subdivision shall be valid only if it
6 complies with paragraph (1) of subdivision~~(h)~~ (i) of Section
7 17701.02.

8 Notwithstanding this condition, notice shall not be given by
9 electronic transmission by the limited liability company under this
10 subdivision after either of the following has occurred:

11 (A) The limited liability company is unable to deliver two
12 consecutive notices to the member by that means.

13 (B) The inability to so deliver the notices to the member
14 becomes known to the secretary, any assistant secretary, the transfer
15 agent, or any other person responsible for the giving of the notice.

16 (5) Upon written request to a manager by any person entitled
17 to call a meeting of members, the manager shall immediately cause
18 notice to be given to the members entitled to vote that a meeting
19 will be held at a time requested by the person calling the meeting,
20 not less than 10 days nor more than 60 days after the receipt of the
21 request. If the notice is not given within 20 days after receipt of
22 the request, the person entitled to call the meeting may give the
23 notice or, upon the application of that person, the superior court
24 of the county in which the principal executive office of the limited
25 liability company is located, or if the principal executive office is
26 not in this state, the county in which the limited liability company's
27 address in this state is located, shall summarily order the giving
28 of the notice, after notice to the limited liability company affording
29 it an opportunity to be heard. The procedure provided in
30 subdivision (c) of Section 305 shall apply to the application. The
31 court may issue any order as may be appropriate, including, without
32 limitation, an order designating the time and place of the meeting,
33 the record date for determination of members entitled to vote, and
34 the form of notice.

35 (i) When a members' meeting is adjourned to another time or
36 place, unless the articles of organization or a written operating
37 agreement otherwise require and except as provided in this
38 subdivision, notice need not be given of the adjourned meeting if
39 the time and place thereof or the means of electronic transmission
40 by and to the limited liability company or electronic video screen

1 communication, if any, are announced at the meeting at which the
2 adjournment is taken. At the adjourned meeting, the limited liability
3 company may transact any business that may have been transacted
4 at the original meeting. If the adjournment is for more than 45
5 days, or if after the adjournment a new record date is fixed for the
6 adjourned meeting, a notice of the adjourned meeting shall be
7 given to each member of record entitled to vote at the meeting.

8 (j) The actions taken at any meeting of members, however called
9 and noticed, and wherever held, have the same validity as if taken
10 at a meeting duly held after regular call and notice, if a quorum is
11 present either in person or by proxy, and if, either before or after
12 the meeting, each of the members entitled to vote, not present in
13 person or by proxy, provides a waiver of notice or consents to the
14 holding of the meeting or approves the minutes of the meeting in
15 writing. All waivers, consents, and approvals shall be filed with
16 the limited liability company records or made a part of the minutes
17 of the meeting after conversion to the form in which those records
18 or minutes are kept. Attendance of a person at a meeting shall
19 constitute a waiver of notice of the meeting, except when the person
20 objects, at the beginning of the meeting, to the transaction of any
21 business because the meeting is not lawfully called or convened.
22 Attendance at a meeting is not a waiver of any right to object to
23 the consideration of matters required by this title to be included
24 in the notice but not so included, if the objection is expressly made
25 at the meeting. Neither the business to be transacted nor the purpose
26 of any meeting of members need be specified in any written waiver
27 of notice, unless otherwise provided in the articles of organization
28 or operating agreement, except as provided in subdivision (l).

29 (k) Members may participate in a meeting of the limited liability
30 company through the use of conference telephones or electronic
31 video screen communication, as long as all members participating
32 in the meeting can hear one another, or by electronic transmission
33 by and to the limited liability company pursuant to paragraphs (1)
34 and (2) of subdivision ~~(h)~~ (i) of Section 17701.02. Participation in
35 a meeting pursuant to this provision constitutes presence in person
36 at that meeting.

37 (l) Any action approved at a meeting, other than by unanimous
38 approval of those entitled to vote, shall be valid only if the general
39 nature of the proposal so approved was stated in the notice of
40 meeting or in any written waiver of notice.

1 (m) (1) A majority ~~in interest~~ of the members represented in
2 person or by proxy shall constitute a quorum at a meeting of
3 members.

4 (2) The members present at a duly called or held meeting at
5 which a quorum is present may continue to transact business until
6 adjournment, notwithstanding the loss of a quorum, if any action
7 taken after loss of a quorum, other than adjournment, is approved
8 by the requisite percentage of interests of members specified in
9 this title or in the articles of organization or a written operating
10 agreement.

11 (3) In the absence of a quorum, any meeting of members may
12 be adjourned from time to time by the vote of a majority of the
13 interests represented either in person or by proxy, but no other
14 business may be transacted, except as provided in paragraph (2).

15 (n) (1) Any action that may be taken at any meeting of the
16 members may be taken without a meeting if a consent in writing,
17 setting forth the action so taken, is signed and delivered to the
18 limited liability company within 60 days of the record date for that
19 action by members having not less than the minimum number of
20 votes that would be necessary to authorize or take that action at a
21 meeting at which all members entitled to vote thereon were present
22 and voted.

23 (2) Unless the consents of all members entitled to vote have
24 been solicited in writing, (A) notice of any member approval of
25 an amendment to the articles of organization or operating
26 agreement, a dissolution of the limited liability company as
27 provided in Section 17707.01, or a merger of the limited liability
28 company as provided in Section 17710.10, without a meeting by
29 less than unanimous written consent shall be given at least 10 days
30 before the consummation of the action authorized by the approval,
31 and (B) prompt notice shall be given of the taking of any other
32 action approved by members without a meeting by less than
33 unanimous written consent, to those members entitled to vote who
34 have not consented in writing.

35 (3) Any member giving a written consent, or the member's
36 proxyholder, may revoke the consent personally or by proxy by a
37 writing received by the limited liability company prior to the time
38 that written consents of members having the minimum number of
39 votes that would be required to authorize the proposed action have
40 been filed with the limited liability company, but may not do so

1 thereafter. This revocation is effective upon its receipt at the office
2 of the limited liability company required to be maintained pursuant
3 to Section 17701.13.

4 (o) The use of proxies in connection with this section shall be
5 governed in the same manner as in the case of corporations formed
6 under the General Corporation Law, Division 1 (commencing with
7 Section 100) of Title 1.

8 (p) In order that the limited liability company may determine
9 the members of record entitled to notices of any meeting or to vote,
10 or entitled to receive any distribution or to exercise any rights in
11 respect of any other lawful action, a manager, or members
12 representing more than 10 percent of the interests of members,
13 may fix, in advance, a record date, that is not more than 60 days
14 nor less than 10 days prior to the date of the meeting and not more
15 than 60 days prior to any other action. If no record date is fixed
16 the following shall apply:

17 (1) The record date for determining members entitled to notice
18 of or to vote at a meeting of members shall be at the close of
19 business on the business day next preceding the day on which
20 notice is given or, if notice is waived, at the close of business on
21 the business day next preceding the day on which the meeting is
22 held.

23 (2) The record date for determining members entitled to give
24 consent to limited liability company action in writing without a
25 meeting shall be the day on which the first written consent is given.

26 (3) The record date for determining members for any other
27 purpose shall be at the close of business on the day on which the
28 managers adopt the resolution relating thereto, or the 60th day
29 prior to the date of the other action, whichever is later.

30 (4) The determination of members of record entitled to notice
31 of or to vote at a meeting of members shall apply to any
32 adjournment of the meeting unless a manager or the members who
33 called the meeting fix a new record date for the adjourned meeting,
34 but the manager or the members who called the meeting shall fix
35 a new record date if the meeting is adjourned for more than 45
36 days from the date set for the original meeting.

37 (q) A meeting of the members may be conducted, in whole or
38 in part, by electronic transmission by and to the limited liability
39 company or by electronic video screen communication if both of
40 the following requirements are met:

1 (1) The limited liability company implements reasonable
2 measures to provide members, in person or by proxy, a reasonable
3 opportunity to participate in the meeting and to vote on matters
4 submitted to the members, including an opportunity to read or hear
5 the proceedings of the meeting substantially concurrently with
6 those proceedings.

7 (2) When any member votes or takes other action at the meeting
8 by means of electronic transmission to the limited liability company
9 or electronic video screen communication, a record of that vote or
10 action shall be maintained by the limited liability company.

11 *(r) The articles of organization or a written operating agreement*
12 *may provide to all or certain identified members of a specified*
13 *class or group of members the right to vote separately or with all*
14 *or any class or group of members on any matter. Voting by*
15 *members may be on a per capita, number, financial interest, class,*
16 *group, or any other basis. If no voting provision is contained in*
17 *the articles of organization or written operating agreement, each*
18 *of the following shall apply:*

19 *(1) The members of a limited liability company shall vote in*
20 *proportion to their interests in current profits of the limited liability*
21 *company or, in the case of a member who has assigned the*
22 *member's entire transferable interest in the limited liability*
23 *company to a person who has not been admitted as a member, in*
24 *proportion to the interest in current profits that the assigning*
25 *member would have, had the assignment not been made.*

26 *(2) Any amendment to the articles of organization or operating*
27 *agreement shall require the unanimous vote of all members.*

28 *(3) In all other matters in which a vote is required, except as*
29 *otherwise provided in this section, a vote of a majority of the*
30 *members shall be sufficient.*

31 *(s) Notwithstanding any provision to the contrary in the articles*
32 *of organization or operating agreement, in no event shall the*
33 *articles of organization be amended by a vote of less than a*
34 *majority of the members.*

35 *(t) Notwithstanding any provision to the contrary in the articles*
36 *of organization or operating agreement, members shall have the*
37 *right to vote on a dissolution of the limited liability company as*
38 *provided in subdivision (b) of Section 17707.01 and on a merger*
39 *of the limited liability company as provided in Section 17710.12.*

1 (u) A written operating agreement may provide for the
2 appointment of officers, including, but not limited to, a chairperson
3 or a president, or both a chairperson and a president, a secretary,
4 a chief financial officer, and any other officers with the titles,
5 powers, and duties as shall be specified in the articles of
6 organization or operating agreement or as determined by the
7 managers or members. An officer may, but does not need to, be a
8 member or manager of the limited liability company, and any
9 number of offices may be held by the same person.

10 (v) Officers, if any, shall be appointed in accordance with the
11 written operating agreement or, if no such provision is made in
12 the operating agreement, any officers shall be appointed by the
13 managers and shall serve at the pleasure of the managers, subject
14 to the rights, if any, of an officer under any contract of employment.
15 Any officer may resign at any time upon written notice to the
16 limited liability company without prejudice to the rights, if any,
17 of the limited liability under any contract to which the officer is a
18 party.

19 (w) Subject to the provisions of the articles of organization, any
20 note, mortgage, evidence of indebtedness, contract, certificate,
21 statement, conveyance, or other instrument in writing, and any
22 assignment or endorsement thereof, executed or entered into
23 between any limited liability company and any other person, when
24 signed by the chairperson of the board, the president, or any vice
25 president and any secretary, any assistant secretary, the chief
26 financial officer, or any assistant treasurer of the limited liability
27 company, is not invalidated as to the limited liability company by
28 any lack of authority of the signing officers in the absence of actual
29 knowledge on the part of the other person that the signing officers
30 had no authority to execute the same.

31 17704.08. (a) A limited liability company, ~~or a series of a~~
32 ~~limited liability company~~, shall reimburse for any payment made
33 and indemnify for any debt, obligation, or other liability incurred
34 by a member of a member-managed limited liability company or
35 the manager of a manager-managed limited liability company in
36 the course of the member's or manager's activities on behalf of
37 the limited liability company, if, in making the payment or
38 incurring the debt, obligation, or other liability, the member or
39 manager complied with the duties stated in Sections 17704.05 and
40 17704.09.

1 (b) A limited liability company, ~~or a series of a limited liability~~
2 ~~company~~, may purchase and maintain insurance on behalf of a
3 member or manager of the limited liability company against
4 liability asserted against or incurred by the member or manager in
5 that capacity or arising from that status even if, under subdivision
6 (g) of Section 17701.10, the operating agreement could not
7 eliminate or limit the person's liability to the limited liability
8 company for the conduct giving rise to the liability.

9 17704.09. (a) The fiduciary duties that a member owes to a
10 member-managed limited liability company, ~~or a series of a limited~~
11 ~~liability company~~, and the other members of the limited liability
12 company, ~~or a series of a limited liability company~~, are the duties
13 of loyalty and care under subdivisions (b) and (c).

14 (b) A member's duty of loyalty to a limited liability company;
15 ~~or a series of a limited liability company~~, and the other members
16 is limited to the following:

17 (1) To account to a limited liability company, ~~or a series of a~~
18 ~~limited liability company~~, and hold as trustee for it any property,
19 profit, or benefit derived by the member in the conduct and winding
20 up of the activities of a limited liability company, ~~or a series of~~
21 ~~the limited liability company~~, or derived from a use by the member
22 of a limited liability company, ~~or a series of a limited liability~~
23 ~~company~~, property, including the appropriation of a limited liability
24 company, ~~or a series of a limited liability company~~, opportunity.

25 (2) To refrain from dealing with a limited liability company, ~~or~~
26 ~~a series of a limited liability company~~, in the conduct or winding
27 up of the activities of a limited liability company, ~~or a series of a~~
28 ~~limited liability company~~, as or on behalf of a party having an
29 interest adverse to a limited liability company, ~~or a series of a~~
30 ~~limited liability company~~.

31 (3) To refrain from competing with a limited liability company;
32 ~~or a series of a limited liability company~~, in the conduct or winding
33 up of the activities of the limited liability company, ~~or a series of~~
34 ~~the limited liability company~~.

35 (c) A member's duty of care to a limited liability company, ~~or~~
36 ~~a series of a limited liability company~~, and the other members in
37 the conduct and winding up the activities of the limited liability
38 company, ~~or a series of the limited liability company~~, is limited
39 to refraining from engaging in grossly negligent or reckless
40 conduct, intentional misconduct, or a knowing violation of law.

(d) A member shall discharge the duties to a limited liability company, ~~or a series of a limited liability company~~, and the other members under this title or under the operating agreement and exercise any rights consistent with the obligation of good faith and fair dealing.

(e) A member does not violate a duty or obligation under this article or under the operating agreement merely because the member's conduct furthers the member's own interest.

(f) In a manager-managed limited liability company, all of the following rules apply:

(1) Subdivisions (a), (b), (c), and (e) apply to the manager or managers and not the members.

(2) Subdivision (d) applies to the members and managers.

(3) A member does not have any fiduciary duty to the limited liability company, ~~or a series of a limited liability company~~, or to any other member solely by reason of being a member.

17704.10. (a) ~~In a member-managed limited liability company, all of the following rules apply:~~ *Upon the request of a member or holder of a transferable interest, for purposes reasonably related to the interest of that person as a member or a holder of a transferable interest, a manager shall promptly deliver, in writing, to the member or holder of a transferable interest, at the expense of the limited liability company, a copy of the information required to be maintained by paragraphs (1), (2), and (4) of subdivision (d) of Section 17701.13, and any written operating agreement of the limited liability company.*

~~(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company regarding the limited liability company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this title.~~

~~(2) The limited liability company shall furnish to each member all of the following:~~

~~(A) Without demand, any information concerning the limited liability company's activities, financial condition, and other circumstances that the limited liability company knows and that is material to the proper exercise of the member's rights and duties under the operating agreement or this title, except to the extent the~~

1 ~~limited liability company can establish that it reasonably believes~~
2 ~~the member already knows the information.~~

3 ~~(B) On demand, any other information concerning the limited~~
4 ~~liability company's activities, financial condition, and other~~
5 ~~circumstances, except to the extent the demand or information~~
6 ~~demanded is unreasonable or otherwise improper under the~~
7 ~~circumstances.~~

8 ~~(3) The duty to furnish information under paragraph (2) also~~
9 ~~applies to each member to the extent the member knows any of~~
10 ~~the information described in paragraph (2).~~

11 ~~(b) In a manager-managed limited liability company, all of the~~
12 ~~following rules apply: Each member, manager, and holder of a~~
13 ~~transferable interest has the right, upon reasonable request, for~~
14 ~~purposes reasonably related to the interest of that person as a~~
15 ~~member, manager, or holder of a transferable interest, to each of~~
16 ~~the following:~~

17 ~~(1) The informational rights stated in subdivision (a) and the~~
18 ~~duty stated in paragraph (3) of subdivision (a) apply to the~~
19 ~~managers and not the members. To inspect and copy during normal~~
20 ~~business hours any of the records required to be maintained~~
21 ~~pursuant to Section 17701.13.~~

22 ~~(2) During regular business hours and at a reasonable location~~
23 ~~specified by To obtain in writing from the limited liability~~
24 ~~company, a member may obtain from the limited liability company~~
25 ~~and inspect and copy full information regarding the activities,~~
26 ~~financial condition, and other circumstances promptly after~~
27 ~~becoming available, a copy of the limited liability company as is~~
28 ~~just and reasonable if all of the following apply: company's federal,~~
29 ~~state, and local income tax returns for each year.~~

30 ~~(A) The member seeks the information for a purpose material~~
31 ~~to the member's interest as a member.~~

32 ~~(B) The member makes a demand in a record received by the~~
33 ~~limited liability company, describing with reasonable particularity~~
34 ~~the information sought, and the purpose for seeking the~~
35 ~~information.~~

36 ~~(C) The information sought is directly connected to the~~
37 ~~member's purpose.~~

38 ~~(3) Within 10 days after receiving a demand pursuant to~~
39 ~~subparagraph (B) of paragraph (2), the limited liability company~~

1 shall in a record inform the member that made the demand of all
2 the following:

3 (A) The information that the limited liability company will
4 provide in response to the demand and when and where the limited
5 liability company will provide the information.

6 (B) If the limited liability company declines to provide any
7 demanded information, the limited liability company's reasons for
8 declining.

9 (4) Whenever this title or an operating agreement provides for
10 a member to give or withhold consent to a matter, before the
11 consent is given or withheld, the limited liability company shall,
12 without demand, provide the member with all information that is
13 known to the limited liability company and is material to the
14 member's decision.

15 (c) On 10 days' demand made in a record received by a limited
16 liability company, a dissociated member may have access to
17 information to which the person was entitled while a member if
18 the information pertains to the period during which the person was
19 a member, the person seeks the information in good faith, and the
20 person satisfies the requirements imposed on a member by
21 paragraph (2) of subdivision (b). The limited liability company
22 shall respond to a demand made pursuant to this subdivision in
23 the manner provided in paragraph (3) of subdivision (b).

24 (d) A limited liability company may charge a person that makes
25 a demand under this section the reasonable costs of copying the
26 information, limited to the costs of labor and material.

27 (e) A member or dissociated member may exercise rights under
28 this section through an agent or, in the case of an individual under
29 legal disability, a legal representative. Any restriction or condition
30 imposed by the operating agreement or under subdivision (g)
31 applies both to the agent or legal representative and the member
32 or dissociated member.

33 (f) The rights under this section do not extend to a person as
34 transferee.

35 (g) In addition to any restriction or condition stated in its
36 operating agreement, a limited liability company, as a matter within
37 the ordinary course of its activities, may impose reasonable
38 restrictions and conditions on access to and use of information to
39 be furnished under this section, including designating information
40 confidential and imposing nondisclosure and safeguarding

1 ~~obligations on the recipient. In a dispute concerning the~~
2 ~~reasonableness of a restriction under this subdivision, the limited~~
3 ~~liability company has the burden of proving reasonableness.~~

4 *(c) In the case of a limited liability company with more than 35*
5 *members, each of the following shall apply:*

6 *(1) A manager shall cause an annual report to be sent to each*
7 *of the members not later than 120 days after the close of the fiscal*
8 *year. The report, which may be sent by electronic transmission by*
9 *the limited liability company (paragraph (1) of subdivision (i) of*
10 *Section 17701.02) shall contain a balance sheet as of the end of*
11 *the fiscal year and an income statement and a statement of*
12 *cashflows for the fiscal year.*

13 *(2) Members representing at least 5 percent of the voting*
14 *interests of members, or three or more members, may make a*
15 *written request to a manager for an income statement of the limited*
16 *liability company for the initial three-month, six-month, or*
17 *nine-month period of the current fiscal year ended more than 30*
18 *days prior to the date of the request, and a balance sheet of the*
19 *limited liability company as of the end of that period. The statement*
20 *shall be delivered or mailed to the members within 30 days*
21 *thereafter.*

22 *(3) The financial statements referred to in this section shall be*
23 *accompanied by the report thereon, if any, of the independent*
24 *accountants engaged by the limited liability company or, if there*
25 *is no report, the certificate of the manager of the limited liability*
26 *company that the financial statements were prepared without audit*
27 *from the books and records of the limited liability company.*

28 *(d) A manager shall promptly furnish to a member a copy of*
29 *any amendment to the articles of organization or operating*
30 *agreement executed by a manager pursuant to a power of attorney*
31 *from the member. The articles of organization or operating*
32 *agreement may be sent by electronic transmission by the limited*
33 *liability company.*

34 *(e) The limited liability company shall send or cause information*
35 *to be sent in writing to each member or holder of a transferable*
36 *interest within 90 days after the end of each taxable year the*
37 *information necessary to complete federal and state income tax*
38 *or information returns and, in the case of a limited liability*
39 *company with 35 or fewer members, a copy of the limited liability*

1 company's federal, state, and local income tax or information
2 returns for the year.

3 (f) In addition to any other remedies, a court of competent
4 jurisdiction may enforce the duty of making and mailing or
5 delivering the information and financial statements required by
6 this section and, for good cause shown, extend the time therefor.

7 (g) In any action under this section, if the court finds the failure
8 of the limited liability company to comply with the requirements
9 of this section is without justification, the court may award an
10 amount sufficient to reimburse the person bringing the action for
11 the reasonable expenses incurred by that person, including
12 attorneys' fees, in connection with the action or proceeding.

13 (h) Any waiver of the rights provided in this section shall be
14 unenforceable.

15 (i) Any request, inspection, or copying by a member or holder
16 of a transferable interest may be made by that person or by that
17 person's agent or attorney.

18 ~~(h)~~

19 (j) Upon complaint that a limited liability company is failing to
20 comply with the provisions of ~~Section 17704.11~~ this section, or
21 to afford to the members rights given to them in the articles of
22 organization or operating agreement, the Attorney General may,
23 in the name of the people of the State of California, send to the
24 office required to be maintained pursuant to Section 17701.13,
25 notice of the complaint.

26 ~~(i)~~

27 (k) If the answer of the limited liability company is not received
28 within 30 days of the date the notice was transmitted, or if the
29 answer is not satisfactory, and if the enforcement of the rights of
30 the aggrieved persons by private civil action, by class action, or
31 otherwise, would be so burdensome or expensive as to be
32 impracticable, the Attorney General may institute, maintain, or
33 intervene in any court of competent jurisdiction or before any
34 administrative agency for relief by way of injunction, the
35 dissolution of entities, the appointment of receivers, or any other
36 temporary, preliminary, provisional, or final remedies as may be
37 appropriate to protect the rights of members or to restore the
38 position of the members for the failure to comply with the
39 requirements of Section 17701.13 or the articles of organization
40 or the operating agreement. In any action, suit, or proceeding, there

1 may be joined as parties all persons and entities responsible for or
2 affected by the activity.

3
4 Article 5. Transferable Interests and Rights of Transferees and
5 Creditors
6

7 17705.01. A transferable interest is personal property.

8 17705.02. (a) With respect to a transfer, in whole or in part,
9 of a transferable interest, all of the following apply:

10 (1) A transfer is permissible.

11 (2) A transfer does not by itself cause a member's dissociation
12 or a dissolution and winding up of the activities of a limited liability
13 company, ~~or a series of a limited liability company.~~

14 (3) Subject to Section 17705.04, a transfer does not entitle the
15 transferee to do any of the following:

16 (A) Participate in the management or conduct of the activities
17 of a limited liability company ~~or a series of a limited liability~~
18 ~~company.~~

19 (B) Except as otherwise provided in subdivision (c), have access
20 to records or other information concerning the activities of a limited
21 liability company ~~or a series of a limited liability company.~~

22 (b) A transferee has the right to receive, in accordance with the
23 transfer, distributions to which the transferor would otherwise be
24 entitled.

25 (c) In a dissolution and winding up of a limited liability
26 company, a transferee is entitled to an account of the limited
27 liability company's transactions only from the date of dissolution.

28 (d) A transferable interest may be evidenced by a certificate of
29 the interest issued by the limited liability company, ~~or a series of~~
30 ~~a limited liability company,~~ in a record, and, subject to this article,
31 the interest represented by the certificate may be transferred by a
32 transfer of the certificate.

33 (e) A limited liability company, ~~or a series of a limited liability~~
34 ~~company,~~ need not give effect to a transferee's rights under this
35 section until the limited liability company, ~~or a series of a limited~~
36 ~~liability company,~~ has notice of the transfer.

37 (f) A transfer of a transferable interest in violation of a restriction
38 on transfer contained in the operating agreement is ineffective as
39 to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in paragraph (2) of subdivision (d) of Section 17706.02, when a member transfers a transferable interest, the transferor retains the rights of a member, other than the interest in distributions transferred, and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Section 17704.03 and subdivision (c) of Section 17704.06 known to the transferee when the transferee becomes a member.

17705.03. (a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subdivision (a), the court may do any of the following:

(1) Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made.

(2) Make all other orders necessary to give effect to the charging order.

(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to Section 17705.02.

(c) At any time before foreclosure under paragraph (3) of subdivision (b), the member or transferee whose transferable interest is subject to a charging order under subdivision (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(d) At any time before foreclosure under paragraph (3) of subdivision (b), a limited liability company or one or more members whose transferable interests are not subject to the

1 charging order may pay to the judgment creditor the full amount
2 due under the judgment and thereby succeed to the rights of the
3 judgment creditor, including the charging order.

4 (e) This title does not deprive any member or transferee of the
5 benefit of any exemption laws applicable to the member's or
6 transferee's transferable interest.

7 (f) This section provides the exclusive remedy by which a person
8 seeking to enforce a judgment against a member or transferee may,
9 in the capacity of judgment creditor, satisfy the judgment from the
10 judgment debtor's transferable interest.

11 17705.04. If a member dies, the deceased member's personal
12 representative or other legal representative may exercise the rights
13 of a transferee provided in subdivision (c) of Section 17705.02
14 and, for the purposes of settling the estate, the rights of a current
15 member under Section 17704.10.

16
17 Article 6. Member's Dissociation
18

19 17706.01. (a) A person has the power to dissociate as a
20 member at any time, rightfully or wrongfully, by withdrawing as
21 a member by express will pursuant to ~~paragraph (1)~~ of subdivision
22 (a) of Section 17706.02.

23 (b) A person's dissociation from a limited liability company is
24 wrongful only if either of the following apply to the dissociation:

25 (1) The dissociation is in breach of an express provision of the
26 operating agreement.

27 (2) The dissociation occurs before the termination of the limited
28 liability company and any of the following:

29 (A) The person withdraws as a member by express will.

30 (B) The person is expelled as a member by judicial order under
31 ~~paragraph (5) of subdivision (a) (e) of Section 17706.02.~~

32 (C) The person is dissociated under ~~subparagraph (A) of~~
33 ~~paragraph (7) of subdivision (a) (g) of Section 17706.02~~ by
34 becoming a debtor in bankruptcy.

35 (D) In the case of a person that is not a trust other than a business
36 trust, an estate, or an individual, the person is expelled or otherwise
37 dissociated as a member because it dissolved or terminated.

38 (c) A person that wrongfully dissociates as a member is liable
39 to the limited liability company and, subject to Section 17709.01,
40 to the other members for damages caused by the dissociation. The

1 liability is in addition to any other debt, obligation, or other liability
2 of the member to the limited liability company or the other
3 members.

4 17706.02. A person is dissociated as a member from a limited
5 liability company when any of the following occur:

6 (a) The limited liability company has notice of the person's
7 express will to withdraw as a member, but, if the person specified
8 a withdrawal date later than the date the limited liability company
9 had notice, on that later date.

10 (b) An event stated in the operating agreement as causing the
11 person's dissociation to occur.

12 (c) The person is expelled as a member pursuant to the operating
13 agreement.

14 (d) The person is expelled as a member by the unanimous
15 consent of the other members because any of the following applies:

16 (1) It is unlawful to carry on the limited liability company's
17 activities with the person as a member.

18 (2) There has been a transfer of all of the person's transferable
19 interest in the limited liability company, other than either of the
20 following:

21 (A) A transfer for security purposes.

22 (B) A charging order in effect under Section 17705.03 that has
23 not been foreclosed.

24 (3) The person is a corporation and, within 90 days after the
25 limited liability company notifies the person that it will be expelled
26 as a member because the person has filed a certificate of dissolution
27 or the equivalent, its charter has been revoked, or its right to
28 conduct business has been suspended by the jurisdiction of its
29 incorporation and the certificate of dissolution has not been revoked
30 or its charter or right to conduct business has not been reinstated.

31 (4) The person is a limited liability company or partnership that
32 has been dissolved and whose business is being wound up.

33 (e) On application by the limited liability company, the person
34 is expelled as a member by judicial order because the person has
35 done any of the following:

36 (1) Engaged, or is engaging, in wrongful conduct that has
37 adversely and materially affected, or will adversely and materially
38 affect, the limited liability company's activities.

39 (2) Willfully or persistently committed, or is willfully and
40 persistently committing, a material breach of the operating

1 agreement or the person's duties or obligations under Section
2 17704.09.

3 (3) Engaged, or is engaging, in conduct relating to the limited
4 liability company's activities that makes it not reasonably
5 practicable to carry on the activities with the person as a ~~member~~:
6 *member*.

7 (f) In the case of a person who is an individual, if either of the
8 following applies:

9 (1) The person dies.

10 (2) In a member-managed limited liability company if either of
11 the following applies:

12 (A) A guardian or general conservator for the person is
13 appointed.

14 (B) There is a judicial order that the person has otherwise
15 become incapable of performing the person's duties as a member
16 under this title or the operating agreement.

17 (g) In a member-managed limited liability company, the person
18 becomes a debtor in bankruptcy.

19 (h) In the case of a person that is a trust or is acting as a member
20 by virtue of being a trustee of a trust, the trust's entire transferable
21 interest in the limited liability company is distributed but not solely
22 by reason of a substitution of a successor trustee.

23 (i) In the case of a person that is an estate or is acting as a
24 member by virtue of being a personal representative of an estate,
25 the estate's entire transferable interest in the limited liability
26 company is distributed but not solely by reason of a substitution
27 of a successor personal representative.

28 (j) In the case of a member that is not an individual, partnership,
29 limited liability company, corporation, trust, or estate, the
30 termination of the member.

31 (k) The limited liability company participates in a merger under
32 Article 10 (commencing with Section 17710.01), if either of the
33 following applies:

34 (1) The limited liability company is not the surviving entity.

35 (2) Otherwise as a result of the merger, the person ceases to be
36 a member.

37 (l) The limited liability company terminates.

38 17706.03. (a) When a person is dissociated as a member of a
39 limited liability company all of the following apply:

1 (1) The person's right to participate as a member in the
2 management and conduct of the limited liability company's
3 activities terminates.

4 (2) If the limited liability company is member-managed, the
5 person's fiduciary duties as a member end with regard to matters
6 arising and events occurring after the person's dissociation.

7 (3) Subject to Section 17705.04 and Article 10 (commencing
8 with Section 17710.01), any transferable interest owned by the
9 person immediately before dissociation in the person's capacity
10 as a member is owned by the person solely as a transferee.

11 (b) A person's dissociation as a member of a limited liability
12 company does not of itself discharge the person from any debt,
13 obligation, or other liability to the limited liability company or the
14 other members that the person incurred while a member.

15
16 Article 7. Dissolution and Winding Up
17

18 17707.01. A limited liability company, ~~or a series of a limited~~
19 ~~liability company~~, is dissolved, and its activities shall be wound
20 up, upon the happening of the first to occur of the following:

21 (a) On the happening of an event set forth in a written operating
22 agreement or the articles of organization.

23 (b) By the vote of a majority ~~in interest~~ of the members of the
24 ~~limited liability company, or a series of a limited liability company,~~
25 or a greater percentage of the voting interests of members as may
26 be specified in the articles of organization, or a written operating
27 agreement.

28 (c) The passage of 90 consecutive days during which the limited
29 liability company, ~~or a series of a limited liability company,~~ has
30 no members, except on the death of a natural person who is the
31 sole member of a limited liability company, ~~or a series of a limited~~
32 ~~liability company~~, the status of the member, including a
33 membership interest, may pass to the heirs, successors, and assigns
34 of the member by will or applicable law. The heir, successor, or
35 assign of the member's interest becomes a substituted member
36 pursuant to subdivision (d) of Section 17704.01, subject to
37 administration as provided by applicable law, without the
38 permission or consent of the heirs, successors, or assigns or, those
39 administering the estate of the deceased member.

(d) Entry of a decree of judicial dissolution pursuant to Section 17707.03.

17707.02. (a) Notwithstanding any other provision of this title, if a domestic limited liability company has not conducted any business, only a majority of the members, or, if there are no members, the majority of the managers, if any, or if no members or managers, the person or a majority of the persons signing the articles of organization, may execute and acknowledge a certificate of cancellation of articles of organization, on a form prescribed by the Secretary of State, stating all of the following:

(1) The name of the domestic limited liability company and the Secretary of State's file number.

(2) That the certificate of cancellation is being filed within 12 months from the date the articles of organization was filed.

(3) That the limited liability company does not have any debts or other liabilities, except as provided in paragraph (4).

(4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(5) That the known assets of the limited liability company remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled thereto or that the limited liability company acquired no known assets, as the case may be.

(6) That the limited liability company has not conducted any business from the time of the filing of the articles of organization.

(7) That a majority of the managers or members voted, or, if no managers or members, the person or a majority of the persons signing the articles of organization, voted to dissolve the limited liability company.

(8) If the limited liability company has received payments for interests from investors, that those payments have been returned to those investors.

(b) A certificate of cancellation executed and acknowledged pursuant to subdivision (a) shall be filed with the Secretary of State within 12 months from the date that the articles of organization

1 was filed. The Secretary of State shall notify the Franchise Tax
2 Board of the cancellation.

3 (c) Upon filing a certificate of cancellation pursuant to
4 subdivision (a), a limited liability company shall be canceled and
5 its powers, rights, and privileges shall cease.

6 (d) A domestic limited liability company that filed articles of
7 organization on or after January 1, 2004, and that meets all of the
8 conditions described in subdivision (a) may file a certificate of
9 cancellation under this section.

10 17707.03. (a) Pursuant to an action filed by any manager or
11 by any member or members of a limited liability company, a court
12 of competent jurisdiction may decree the dissolution of a limited
13 liability company whenever any of the events specified in
14 subdivision (b) occurs. ~~Pursuant to an action filed by a manager~~
15 ~~or by any member or members of a series, a court of competent~~
16 ~~jurisdiction may decree the dissolution of that series whenever any~~
17 ~~of the events specified in subdivision (b) with respect to that series~~
18 ~~occurs.~~

19 (b) (1) It is not reasonably practicable to carry on the business
20 in conformity with the articles of organization or operating
21 agreement.

22 (2) Dissolution is reasonably necessary for the protection of the
23 rights or interests of the complaining members.

24 (3) The business of the limited liability company, ~~or a series of~~
25 ~~a limited liability company~~, has been abandoned.

26 (4) The management of the limited liability company, ~~or a series~~
27 ~~of a limited liability company~~, is deadlocked or subject to internal
28 dissention.

29 (5) Those in control of the limited liability company, ~~or a series~~
30 ~~of a limited liability company~~, have been guilty of, or have
31 knowingly countenanced persistent and pervasive fraud,
32 mismanagement, or abuse of authority.

33 (c) (1) In any suit for judicial dissolution, the other members
34 may avoid the dissolution of the limited liability company, ~~or a~~
35 ~~series of a limited liability company~~, by purchasing for cash the
36 membership interests owned by the members so initiating the
37 proceeding, the “moving parties,” at their fair market value. In
38 fixing the value, the amount of any damages resulting if the
39 initiation of the dissolution is a breach by any moving party or
40 parties of an agreement with the purchasing party or parties,

including, without limitation, the operating agreement, may be deducted from the amount payable to the moving party or parties; provided, that no member who sues for dissolution on the grounds set forth in paragraph (3), (4), or (5) of subdivision (a) shall be liable for damages for breach of contract in bringing that action.

(2) If the purchasing parties elect to purchase the membership interests owned by the moving parties, are unable to agree with the moving parties upon the fair market value of the membership interests, and give bond with sufficient security to pay the estimated reasonable expenses, including ~~attorneys'~~ ^{attorney's} fees, of the moving parties if the expenses are recoverable under paragraph (3), the court, upon application of the purchasing parties, either in the pending action or in a proceeding initiated in the superior court of the proper county by the purchasing parties, shall stay the winding up and dissolution proceeding and shall proceed to ascertain and fix the fair market value of the membership interests owned by the moving parties.

(3) The court shall appoint three disinterested appraisers to appraise the fair market value of the membership interests owned by the moving parties, and shall make an order referring the matter to the appraisers so appointed for the purpose of ascertaining that value. The order shall prescribe the time and manner of producing evidence, if evidence is required. The award of the appraisers or a majority of them, when confirmed by the court, shall be final and conclusive upon all parties. The court shall enter a decree that shall provide in the alternative for winding up and dissolution of the limited liability company, ~~or a series of a limited liability company,~~ unless payment is made for the membership interests within the time specified by the decree. If the purchasing parties do not make payment for the membership interests within the time specified, judgment shall be entered against them and the surety or sureties on the bond for the amount of the expenses, including ~~attorneys'~~ ^{attorney's} fees, of the moving parties. Any member aggrieved by the action of the court may appeal therefrom.

(4) If the purchasing parties desire to prevent the winding up and dissolution of the limited liability company, ~~or a series of a limited liability company,~~ they shall pay to the moving parties the value of their membership interests ascertained and decreed within the time specified pursuant to this section, or, in the case of an appeal, as fixed on appeal. On receiving that payment or the tender

1 of payment, the moving parties shall transfer their membership
2 interests to the purchasing parties.

3 (5) For the purposes of this section, the valuation date shall be
4 the date upon which the action for judicial dissolution was
5 commenced. However, the court may, upon the hearing of a motion
6 by any party, and for good cause shown, designate some other date
7 as the valuation date.

8 (6) A dismissal of any suit for judicial dissolution by a manager,
9 member, or members shall not affect the other members' rights to
10 avoid dissolution pursuant to this section.

11 17707.04. In the event of a dissolution of a limited liability
12 company all of the following apply:

13 (a) The managers who have not wrongfully dissolved the limited
14 liability company, ~~or a series of a limited liability company~~, or, if
15 none, the members, or, if none, the person or a majority of the
16 persons signing the articles of organization, may wind up the affairs
17 of the limited liability company, ~~or a series of the limited liability~~
18 ~~company~~, unless the dissolution occurs pursuant to Section
19 17707.03, in which event the winding up shall be conducted in
20 accordance with the decree of dissolution. The persons winding
21 up the affairs of the limited liability company, ~~or a series of a~~
22 ~~limited liability company~~, shall give written notice of the
23 commencement of winding up by mail to all known creditors and
24 claimants whose addresses appear on the records of the limited
25 liability company.

26 (b) Upon the petition of any manager or of any member or
27 members, or three or more creditors of a limited liability company
28 ~~or a series of a limited liability company~~, a court of competent
29 jurisdiction may enter a decree ordering the winding up of the
30 limited liability company, ~~or a series of a limited liability company~~,
31 if that appears necessary for the protection of any parties in interest.
32 The decree shall designate the managers or members, or if good
33 cause is shown, another person or persons, who are to wind up the
34 affairs of the limited liability company, ~~or a series of the limited~~
35 ~~liability company~~.

36 (c) Except as otherwise provided in the articles of organization
37 or a written operating agreement, the persons winding up the affairs
38 of the limited liability company, ~~or a series of a limited liability~~
39 ~~company~~, pursuant to this section shall be entitled to reasonable
40 compensation.

1 17707.05. (a) Except as otherwise provided in the articles of
2 organization or the written operating agreement, after determining
3 that all the known debts and liabilities of a limited liability
4 company, ~~or a series of a limited liability company~~, in the process
5 of winding up, including, without limitation, debts and liabilities
6 to members who are creditors of the limited liability company, ~~or~~
7 ~~a series of a limited liability company~~, have been paid or adequately
8 provided for, the remaining assets shall be distributed among the
9 members according to their respective rights and preferences as
10 follows:

11 (1) To members in satisfaction of liabilities for distributions
12 pursuant to Sections 17704.04, 17704.05, and 17704.06.

13 (2) To members of the limited liability company, ~~or a series of~~
14 ~~a limited liability company~~, for the return of their contributions.

15 (3) To members in the proportions in which those members
16 share in distributions.

17 (b) If the winding up is by court proceeding or subject to court
18 supervision, the distribution shall not be made until after the
19 expiration of any period for the presentation of claims that has
20 been prescribed by order of the court.

21 (c) (1) The payment of a debt or liability, whether the
22 whereabouts of the creditor is known or unknown, has been
23 adequately provided for if the payment has been provided for by
24 either of the following means:

25 (A) Payment for the debt or liability has been assumed or
26 guaranteed in good faith by one or more financially responsible
27 persons or by the United States government or any agency of the
28 United States government, and the provision, including the
29 financial responsibility of the person, was determined in good faith
30 and with reasonable care by the members or managers of the
31 limited liability company to be adequate at the time of any
32 distribution of the assets pursuant to this section.

33 (B) The amount of the debt or liability has been deposited as
34 provided in Section 2008 of the General Corporation Law.

35 (2) This subdivision shall not prescribe the exclusive means of
36 making adequate provision for debts and liabilities.

37 17707.06. (a) A limited liability company, ~~or a series of a~~
38 ~~limited liability company~~, that is dissolved nevertheless continues
39 to exist for the purpose of winding up its affairs, prosecuting and
40 defending actions by or against it in order to collect and discharge

1 obligations, disposing of and conveying its property, and collecting
2 and dividing its assets. A limited liability company, ~~or a series of~~
3 ~~a limited liability company~~, shall not continue business except so
4 far as necessary for its winding up.

5 (b) No action or proceeding to which a limited liability company
6 is a party abates by the dissolution of the limited liability company;
7 ~~or a series of a limited liability company~~, or by reason of
8 proceedings for its winding up and dissolution.

9 (c) Any assets inadvertently or otherwise omitted from the
10 winding up continue in the dissolved limited liability company;
11 ~~or a series of a limited liability company~~, for the benefit of the
12 persons entitled to those assets upon dissolution and on realization
13 shall be distributed accordingly.

14 (d) After dissolution of the limited liability company, ~~or a series~~
15 ~~of a limited liability company~~, the limited liability company, ~~or a~~
16 ~~series of a limited liability company~~, is bound by both of the
17 following:

18 (1) The act of a person authorized to wind up the affairs of the
19 limited liability company, ~~or a series of a limited liability company~~,
20 if the act is appropriate for winding up the activities of the limited
21 liability company, ~~or a series of the limited liability company~~.

22 (2) The act of a person authorized to act on behalf of the limited
23 liability company, ~~or a series of a limited liability company~~, if the
24 act would have bound the limited liability company, ~~or a series of~~
25 ~~a limited liability company~~, before dissolution, if the other party
26 to the transaction did not have notice of the dissolution.

27 17707.07. (a) (1) Causes of action against a dissolved limited
28 liability company, ~~or a series of a limited liability company~~,
29 whether arising before or after the dissolution of the limited liability
30 company, ~~or a series of a limited liability company~~, may be
31 enforced against any of the following:

32 (A) Against the dissolved limited liability company, ~~or a series~~
33 ~~of a limited liability company~~, to the extent of its undistributed
34 assets, including, without limitation, any insurance assets held by
35 the limited liability company, ~~or a series of a limited liability~~
36 ~~company~~, that may be available to satisfy claims.

37 (B) If any of the assets of the dissolved limited liability
38 company, ~~or a series of a limited liability company~~, have been
39 distributed to members, against members of the dissolved limited
40 liability company, ~~or a series of a limited liability company~~, to the

1 extent of the limited liability company, ~~or a series of a limited~~
2 ~~liability company~~, assets distributed to them upon dissolution of
3 the limited liability company, ~~or a series of a limited liability~~
4 ~~company~~.

5 Any member compelled to return distributed assets in an amount
6 that exceeds the sum of the member's pro rata share of the claim
7 and the amount for which the member could otherwise be held
8 liable under Section 17704.05 or 17704.06 may seek contribution
9 for the excess from any other member or manager, up to the sum
10 of that other ~~person's~~ *person's* pro rata share of the claim and that
11 other person's liabilities under Section 17704.05 or 17704.06;
12 ~~provided that in case of dissolution of a series, such member may~~
13 ~~seek contribution as provided in this section only from another~~
14 ~~member or manager of that series.~~

15 (2) Except as set forth in subdivision (c), all causes of action
16 against a member of a dissolved limited liability company, ~~or a~~
17 ~~series of a limited liability company~~, arising under this section are
18 extinguished unless the claimant commences a proceeding to
19 enforce the cause of action against that member of a dissolved
20 limited liability company, ~~or a series of a limited liability company~~,
21 prior to the earlier of the following:

22 (A) The expiration of the statute of limitations applicable to the
23 cause of action.

24 (B) Four years after the effective date of the dissolution of the
25 limited liability company ~~or a series of a limited liability company~~.

26 (3) As a matter of procedure only, and not for purposes of
27 determining liability, members of the dissolved limited liability
28 company, ~~or a series of a limited liability company~~, may be sued
29 in the name of the limited liability company, ~~or a series of a limited~~
30 ~~liability company~~, upon any cause of action against the limited
31 liability company, ~~or a series of a limited liability company~~. This
32 section does not affect the rights of the limited liability company;
33 ~~or a series of a limited liability company~~, or its creditors under
34 Sections 17704.05 and 17704.06, or the rights, if any, of creditors
35 under the Uniform Fraudulent Transfer Act, that may arise against
36 the member of a limited liability company, ~~or a series of a limited~~
37 ~~liability company~~.

38 (b) Summons or other process against a limited liability
39 company, ~~or a series of a limited liability company~~, may be served
40 by delivering a copy thereof to a manager, member, officer, or

1 person having charge of its assets or, if none of these persons can
2 be found, to any agent upon whom process might be served at the
3 time of dissolution. If none of those persons can be found with
4 due diligence and it is so shown by affidavit to the satisfaction of
5 the court, then the court may make an order that summons or other
6 process be served upon the dissolved limited liability company;
7 ~~or a series of a limited liability company~~, by personally delivering
8 a copy of the summons or other process, together with a copy of
9 the order, to the Secretary of State or an assistant or Deputy
10 Secretary of State. Service in this manner is deemed complete on
11 the 10th day after delivery of the process to the Secretary of State.
12 Upon receipt of process and the fee therefor, the Secretary of State
13 shall give notice to the limited liability company as provided in
14 Section ~~17717.02~~ 1702.

15 (c) Every ~~limited liability company and each series of a limited~~
16 liability company shall survive and continue to exist indefinitely
17 for the purpose of being sued in any quiet title action. Any
18 judgment rendered in that action shall bind each and all of its
19 members or other persons having any equity or other interest in
20 the limited liability company, ~~or a series of a limited liability~~
21 ~~company~~, to the extent of that interest and the action shall have
22 the same force and effect as an action brought under the provisions
23 of Sections 410.50 and 410.60 of the Code of Civil Procedure.
24 Service of summons or other process in any action may be made
25 as provided in Chapter 4 (commencing with Section 413.10) of
26 Title 5 of Part 2 of the Code of Civil Procedure or as provided in
27 subdivision (b).

28 (d) For purposes of Article 4 (commencing with Section 19071)
29 of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation
30 Code, the liability described in this section shall be considered a
31 liability at law with respect to a dissolved limited liability ~~company~~;
32 ~~or a series of a limited liability~~ company.

33 17707.08. (a) (1) The managers shall cause to be filed in the
34 office of, and on a form prescribed by, the Secretary of State, a
35 certificate of dissolution upon the dissolution of the limited liability
36 company pursuant to Article 7 (commencing with Section
37 17707.01), unless the event causing the dissolution is that specified
38 in subdivision (c) of Section 17707.01, in which case the persons
39 conducting the winding up of the limited liability company's affairs

1 pursuant to Section 17707.04 shall have the obligation to file the
2 certificate of dissolution.

3 (2) The certificate of dissolution shall set forth all of the
4 following:

5 (A) The name of the limited liability company and the Secretary
6 of State's file number.

7 (B) Any other information the persons filing the certificate of
8 dissolution determine to include.

9 (3) If a dissolution pursuant to subdivision (b) of Section
10 17707.01 is made by the vote of all of the members and a statement
11 to that effect is added to the certificate of cancellation of articles
12 of organization pursuant to subdivision (b), the separate filing of
13 a certificate of dissolution pursuant to this subdivision is not
14 required.

15 (b) (1) The persons who filed the certificate of dissolution shall
16 cause to be filed in the office of, and on a form prescribed by, the
17 Secretary of State, a certificate of cancellation of articles of
18 organization upon the completion of the winding up of the affairs
19 of the limited liability company pursuant to Section 17707.06,
20 unless the event causing the dissolution is that specified in
21 subdivision (c) of Section 17707.01, in that case the persons
22 conducting the winding up of the limited liability company's affairs
23 pursuant to Section 17707.04 shall have the obligation to file the
24 certificate of cancellation of articles of organization.

25 (2) The certificate of cancellation of articles of organization
26 shall set forth all of the following:

27 (A) The name of the limited liability company and the Secretary
28 of State's file number.

29 (B) That a final franchise tax return, as described by Section
30 23332 of the Revenue and Taxation Code, or a final annual tax
31 return, as described by Section 17947 of the Revenue and Taxation
32 Code, has been or will be filed with the Franchise Tax Board, as
33 required under Part 10.2 (commencing with Section 18401) of
34 Division 2 of the Revenue and Taxation Code.

35 (C) Any other information the persons filing the certificate of
36 cancellation of articles of organization determine to include.

37 (3) The Secretary of State shall notify the Franchise Tax Board
38 of the filing.

39 17707.09. (a) Notwithstanding the filing of a certificate of
40 dissolution, a majority in interest of the members may cause to be

1 filed, in the office of, and on a form prescribed by, the Secretary
2 of State, a certificate of continuation, in any of the following
3 circumstances:

4 (1) The business of the limited liability company is to be
5 continued pursuant to a unanimous vote of the remaining members.

6 (2) The dissolution of the limited liability company was by vote
7 of the members pursuant to subdivision (b) of Section 17707.01
8 and each member who consented to the dissolution has agreed in
9 writing to revoke his or her vote in favor of or consent to the
10 dissolution.

11 (3) The limited liability company was not, in fact, dissolved.

12 (b) The certificate of continuation shall set forth all of the
13 following:

14 (1) The name of the limited liability company and the Secretary
15 of State's file number.

16 (2) The grounds provided by subdivision (a) that are the basis
17 for filing the certificate of continuation.

18 (c) Upon the filing of a certificate of continuation, the certificate
19 of dissolution shall be of no effect from the time of the filing of
20 the certificate of dissolution.

21 Article 8. Foreign Limited Liability Companies

22 17708.01. (a) The law of the state or other jurisdiction under
23 which a foreign limited liability company is formed governs all
24 of the following:

25 (1) The organization of the limited liability company, its internal
26 affairs, and the authority of its members and managers.

27 (2) The liability of a member as member and a manager as
28 manager for the debts, obligations, or other liabilities of the limited
29 liability company or a series of the limited liability company.

30 (b) A foreign limited liability company shall not be denied a
31 certificate of registration by reason of any difference between the
32 law of the jurisdiction under which the limited liability company
33 is formed and the law of this state.

34 (c) A certificate of registration does not authorize a foreign
35 limited liability company to engage in any business or exercise
36 any power that a limited liability company shall not engage in or
37 exercise in this state.
38
39

1 17708.02. (a) A foreign limited liability company, ~~or a series~~
2 ~~of a foreign limited liability company~~, may apply for a certificate
3 of registration to transact business in this state by delivering an
4 application to the Secretary of State for filing on a form prescribed
5 by the Secretary of State. The application shall state all of the
6 following:

7 (1) The name of the foreign limited liability company ~~or a series~~
8 ~~of a limited liability company and, if the name does not comply~~
9 ~~with Section 17701.08, an alternate name adopted pursuant to~~
10 ~~subdivision (a) of Section 17708.05, and, if different, the name~~
11 ~~under which it proposes to transact business in this state.~~

12 (2) The state and date of its organization and a statement that
13 the foreign limited liability company is authorized to exercise its
14 powers and privileges in that state or other jurisdiction under whose
15 law the limited liability company ~~or a series of a foreign limited~~
16 ~~liability company~~ is formed.

17 (3) The address of the limited liability company's principal
18 executive office and of its principal office in this state, if any.

19 (4) The name and address of the foreign limited liability
20 company's initial agent for service of process in this state, unless
21 a corporate agent is designated in which case only the name of the
22 agent shall be set forth.

23 (5) A statement that the Secretary of State is appointed the agent
24 of the foreign limited liability company for service of process if
25 the agent has resigned and has not been replaced or if the agent
26 cannot be found or served with the exercise of reasonable diligence.

27 (b) A foreign limited liability company shall deliver with a
28 completed application under subdivision (a) a certificate of
29 existence, status, or good standing or a record of similar import
30 signed by the Secretary of State or other official having custody
31 of the limited liability company's publicly filed records in the state
32 or other jurisdiction under whose law the limited liability company
33 is formed. ~~If a series of a foreign limited liability company may~~
34 ~~not obtain a certificate of existence or a record of similar import~~
35 ~~signed by the secretary of state for the state or other jurisdiction~~
36 ~~under whose law it is formed, it may deliver a certificate of~~
37 ~~existence or record of similar import for the limited liability~~
38 ~~company of which it is a series signed by the secretary of state for~~
39 ~~the state or other jurisdiction under whose law it is formed.~~

(c) The Secretary of State shall include with instructional materials, provided in conjunction with registration under subdivision (a), a notice that filing the registration will obligate the limited liability company to pay an annual tax to the Franchise Tax Board pursuant to Section 17941 of the Revenue and Taxation Code. That notice shall be updated annually to specify the dollar amount of the tax.

~~(d) If a foreign limited liability company establishes or provides for the establishment of one or more series of assets, that fact shall be stated on the certificate of registration. In addition, the foreign limited liability company shall state on the certificate of registration whether the debts, liabilities, and obligations incurred, contracted for or otherwise existing with respect to a series, if any, shall be enforceable against the assets of that series only, and not against the assets of the foreign limited liability company generally or any other series of the foreign limited liability company, and whether any of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the foreign limited liability company generally or any other series of the foreign limited liability company shall be enforceable against the assets of that series.~~

17708.03. (a) A foreign limited liability company that enters into repeated and successive transactions of business in this state, other than in interstate or foreign commerce, is considered to be transacting business in this state within the meaning of this article.

(b) Without excluding other activities that may not be considered to be transacting business in this state within the meaning of this article, activities of a foreign limited liability company, ~~or a series of the foreign limited liability company,~~ that do not constitute transacting business in this state include all of the following:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement of those, or the settlement of claims or disputes.

(2) Carrying on any activity concerning its internal affairs, including holding meetings of its members or managers.

(3) Maintaining accounts in financial institutions.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositories with respect to those securities.

1 (5) Selling through independent contractors.

2 (6) Soliciting or procuring orders, whether by mail or electronic
3 means or through employees or agents or otherwise, if the orders
4 require acceptance outside this state before they become contracts.

5 (7) Creating or acquiring indebtedness, evidences of
6 indebtedness, mortgages, liens, or security interests in real or
7 personal property.

8 (8) Securing or collecting debts or enforcing mortgages or other
9 security interests in property securing the debts and holding,
10 protecting, or maintaining property so acquired.

11 (9) Conducting an isolated transaction that is completed within
12 180 days and is not in the course of a number of repeated
13 transactions of a like nature.

14 (10) Transacting business in interstate commerce.

15 (c) Without excluding other activities that may not be considered
16 to be transacting business in this state within the meaning of this
17 article, a foreign limited liability company, ~~or a series of a foreign~~
18 ~~limited liability company~~, shall not be considered to be transacting
19 that business in this state merely because its subsidiary transacts
20 that business in this state, or merely because of its status as any
21 one or more of the following:

22 (1) A shareholder of a domestic corporation.

23 (2) A shareholder of a foreign corporation transacting intrastate
24 business.

25 (3) A limited partner of a foreign limited partnership transacting
26 intrastate business.

27 (4) A limited partner of a domestic limited partnership.

28 (5) A member or manager of a foreign limited liability company
29 transacting intrastate business.

30 (6) A member or manager of a domestic limited liability
31 company.

32 (d) A person shall not be deemed to be transacting business in
33 this state within the meaning of this article merely because of its
34 status as a member or manager of a domestic limited liability
35 company, ~~or a series of a domestic limited liability company~~, or
36 a foreign limited liability company registered to transact intrastate
37 business in this state.

38 (e) This section does not apply in determining the contacts or
39 activities that may subject a foreign limited liability company, ~~or~~
40 ~~a series of a foreign limited liability company~~, to service of process,

1 taxation, or regulation under *the* law of this state other than this
2 article.

3 17708.04. Unless the Secretary of State determines that an
4 application for a certificate of registration does not comply with
5 the filing requirements of this article, the Secretary of State, upon
6 payment of all required filing fees, shall file the application of a
7 foreign limited liability company, prepare, sign, and file a
8 certificate of registration to transact business in this state, and send
9 a copy of the filed certificate, together with a receipt for the fees
10 paid, to the limited liability company or its representative.

11 17708.05. (a) ~~A foreign limited liability company or series of~~
12 ~~a foreign limited liability company~~ whose name does not comply
13 with Section 17701.08 shall not obtain a certificate of registration
14 until it adopts, for the purpose of transacting business in this state,
15 an alternate name that complies with Section 17701.08. ~~A foreign~~
16 ~~limited liability company or series of a foreign limited liability~~
17 ~~company~~ that adopts an alternate name under this subdivision and
18 obtains a certificate of registration with the alternate name need
19 not comply with fictitious or assumed name statutes. After
20 obtaining a certificate of registration with an alternate name, ~~a~~
21 ~~foreign limited liability company or series of a foreign limited~~
22 ~~liability company~~ shall transact business in this state under the
23 alternate name unless the limited liability company ~~or series of a~~
24 ~~foreign limited liability company~~ is authorized under fictitious or
25 assumed name statutes to transact business in this state under
26 another name.

27 (b) If a foreign limited liability company, ~~or a series of a foreign~~
28 ~~limited liability company~~ authorized to transact business in this
29 state changes its name to one that does not comply with Section
30 ~~17701.07~~ 17701.08, it shall not thereafter transact business in this
31 state until it complies with subdivision (a) and obtains an amended
32 certificate of registration.

33 17708.06. (a) To cancel its certificate of registration to
34 transact business in this state, a foreign limited liability company
35 shall deliver to the Secretary of State for filing a notice of
36 cancellation stating the name of the limited liability company and
37 that the limited liability company desires to cancel its certificate
38 of registration. The certificate is canceled when the notice becomes
39 effective.

(b) *The Secretary of State may cancel the application and certificate of registration of a foreign limited liability company if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of the section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice, and 90 days or less after the original filing.*

17708.07. (a) ~~A foreign limited liability company, or a series of a foreign limited liability company,~~ transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of registration to transact business in this state.

(b) ~~The failure of a foreign limited liability company, or a series of a foreign limited liability company,~~ to have a certificate of registration to transact business in this state does not impair the validity of a contract or act of the limited liability company or prevent the limited liability company from defending an action or proceeding in this state.

(c) ~~A member or manager of a foreign limited liability company, or a series of a foreign limited liability company,~~ is not liable for the debts, obligations, or other liabilities of the limited liability company solely because the limited liability company transacted business in this state without a certificate of registration.

(d) ~~If a foreign limited liability company, or a series of a foreign limited liability company,~~ transacts business in this state without a certificate of registration or cancels its certificate of registration, it shall be deemed to have appointed the Secretary of State as its agent for service of process for rights of action arising out of the transaction of business in this state.

17708.08. *If the members of a foreign limited liability company residing in this state represent 25 percent or more of the voting interests of the members of that limited liability company, those members shall be entitled to all information and inspection rights provided in Section 17704.10.*

1 ~~17708.08.~~

2 17708.09. The Attorney General may maintain an action to
3 enjoin a foreign limited liability company from transacting business
4 in this state in violation of this title.

5
6 Article 9. Actions by Members
7

8 17709.01. Any member of a foreign or domestic limited
9 liability company ~~or a series of foreign or domestic limited liability~~
10 ~~company~~ may bring a class action on behalf of all or a class of
11 members to enforce any claim common to those members and any
12 of those actions shall be governed by the law governing class
13 actions generally, provided that in order to maintain the class action
14 there shall be no requirement that the class be so numerous that
15 joinder of all members of the class is impracticable.

16 17709.02. (a) No action shall be instituted or maintained in
17 right of any domestic or foreign limited liability company by any
18 member of the limited liability company, ~~or a series of a limited~~
19 ~~liability company~~, unless both of the following conditions exist:

20 (1) The plaintiff alleges in the complaint that the plaintiff was
21 a member of record, or beneficiary, at the time of the transaction
22 or any part of the transaction of which the plaintiff complains, or
23 that the plaintiff's interest later devolved upon the plaintiff by
24 operation of law from a member who was a member at the time
25 of the transaction or any part of the transaction complained of.
26 Any member who does not meet these requirements may
27 nevertheless be allowed in the discretion of the court to maintain
28 the action on a preliminary showing to and determination by the
29 court, by motion and after a hearing at which the court shall
30 consider any evidence, by affidavit or testimony, as it deems
31 material, of all of the following:

32 (A) There is a strong prima facie case in favor of the claim
33 asserted on behalf of the limited liability company ~~or a series of a~~
34 ~~limited liability~~ company.

35 (B) No other similar action has been or is likely to be instituted.

36 (C) The plaintiff acquired the interest before there was disclosure
37 to the public or to the plaintiff of the wrongdoing of which plaintiff
38 complains.

1 (D) Unless the action can be maintained, the defendant may
2 retain a gain derived from defendant's willful breach of a fiduciary
3 duty.

4 (E) The requested relief will not result in unjust enrichment of
5 the limited liability company or any member of the limited liability
6 ~~company or a series of a limited liability company.~~

7 (2) The plaintiff alleges in the complaint with particularity the
8 plaintiff's efforts to secure from the managers the action the
9 plaintiff desires or the reasons for not making that effort, and
10 alleges further that the plaintiff has either informed the limited
11 liability company, ~~or a series of a limited liability company,~~ or the
12 managers in writing of the ultimate facts of each cause of action
13 against each defendant or delivered to the limited liability company
14 or the managers a true copy of the complaint that the plaintiff
15 proposes to file.

16 (b) In any action referred to in subdivision (a), at any time within
17 30 days after service of summons upon the limited liability
18 company or upon any defendant who is a manager of the limited
19 liability company, ~~or a series of the limited liability company,~~ or
20 held that position at the time of the acts complained of, the limited
21 liability company or the defendant may move the court for an
22 order, upon notice and hearing, requiring the plaintiff to furnish
23 security as hereinafter provided. The motion shall be based upon
24 one or both of the following grounds:

25 (1) That there is no reasonable possibility that the prosecution
26 of the cause of action alleged in the complaint against the moving
27 party will benefit the limited liability company, ~~or a series of the~~
28 ~~limited liability company,~~ or its members.

29 (2) That the moving party, if other than the limited liability
30 company, ~~or a series of the limited liability company,~~ did not
31 participate in the transaction complained of in any capacity. The
32 court, on application of the limited liability company, ~~or a series~~
33 ~~of the limited liability company,~~ or any defendant, may, for good
34 cause shown, extend the 30-day period for an additional period
35 not exceeding 60 days.

36 (c) (1) At the hearing upon any motion pursuant to subdivision
37 (b), the court shall consider evidence, written or oral, by witnesses
38 or affidavit, as may be material to the ground upon which the
39 motion is based, or to a determination of the probable reasonable
40 expenses, including ~~attorneys'~~ attorney's fees, of the limited

1 liability company, ~~or a series of the limited liability company~~, and
2 the moving party that will be incurred in the defense of the action.

3 (2) If the court determines, after hearing the evidence adduced
4 by the parties, that the moving party has established a probability
5 in support of any of the grounds upon which the motion is based,
6 the court shall fix the nature and amount of security, not to exceed
7 fifty thousand dollars (\$50,000), to be furnished by the plaintiff
8 for reasonable expenses, including attorney's fees, that may be
9 incurred by the moving party and the limited liability company in
10 connection with the action. A ruling by the court on the motion
11 shall not be a determination of any issue in the action or of the
12 merits of the action. The amount of the security may thereafter be
13 increased or decreased in the discretion of the court upon a showing
14 that the security provided has or may become inadequate or is
15 excessive, but the court shall not in any event increase the total
16 amount of the security beyond fifty thousand dollars (\$50,000) in
17 the aggregate for all defendants. If the court, upon a motion, makes
18 a determination that security shall be furnished by the plaintiff as
19 to any one or more defendants, the action shall be dismissed as to
20 that defendant or those defendants, unless the security required by
21 the court has been furnished within any reasonable time as shall
22 be fixed by the court. The limited liability company and the moving
23 party shall have recourse to the security in the amount that the
24 court determines upon the termination of the action.

25 (d) If the plaintiff, either before or after a motion is made
26 pursuant to subdivision (b), or any order or determination pursuant
27 to that motion, posts good and sufficient bond or bonds in the
28 aggregate amount of fifty thousand dollars (\$50,000) to secure the
29 reasonable expenses of the parties entitled to make the motion, the
30 plaintiff shall be deemed to have complied with the requirements
31 of this section and with any order for security made pursuant to
32 this section. Any motion then pending shall be dismissed and no
33 further or additional bond or other security shall be required.

34 (e) If a motion is filed pursuant to subdivision (b), no pleadings
35 need be filed by the limited liability company or any other
36 defendant and the prosecution of the action shall be stayed until
37 10 days after the motion has been disposed of.

38 ~~17709.03.— (a) If a limited liability company or a series of a~~
39 ~~limited liability company is named as or made a party in a~~
40 ~~derivative proceeding, the limited liability company or a series~~

1 that is a party to the proceeding may appoint a special litigation
2 committee to investigate the claims asserted in the proceeding and
3 determine whether pursuing the action is in the best interests of
4 the limited liability company or the series that is a party to the
5 proceeding. If the limited liability company or such series appoints
6 a special litigation committee, on motion by the committee made
7 in the name of the limited liability company, except for good cause
8 shown, the court shall stay discovery for the time reasonably
9 necessary to permit the committee to make its investigation. This
10 subdivision does not prevent the court from enforcing a person's
11 right to information under Section 17704.10 or, for good cause
12 shown, granting extraordinary relief in the form of a temporary
13 restraining order or preliminary injunction.

14 (b) ~~A special litigation committee shall be composed of one or~~
15 ~~more disinterested and independent individuals, who may be~~
16 ~~members.~~

17 (c) ~~A special litigation committee shall be appointed as follows:~~

18 (1) ~~In a member-managed limited liability company as follows:~~

19 (A) ~~By the consent of a majority of the members or a series of~~
20 ~~a member-managed limited liability company not named as~~
21 ~~defendants or plaintiffs in the proceeding.~~

22 (B) ~~If all members are named as defendants or plaintiffs in the~~
23 ~~proceeding, by a majority of the members named as defendants.~~

24 (2) ~~In a manager-managed limited liability company or a series~~
25 ~~of a manager-managed limited liability company as follows:~~

26 (A) ~~By a majority of the managers not named as defendants or~~
27 ~~plaintiffs in the proceeding.~~

28 (B) ~~If all managers are named as defendants or plaintiffs in the~~
29 ~~proceeding, by a majority of the managers named as defendants.~~

30 (d) ~~After appropriate investigation, a special litigation committee~~
31 ~~may determine that it is in the best interests of the limited liability~~
32 ~~company or of the series that is a party to the proceeding that the~~
33 ~~proceeding do any of the following:~~

34 (1) ~~Continue under the control of the plaintiff.~~

35 (2) ~~Continue under the control of the committee.~~

36 (3) ~~Be settled on terms approved by the committee.~~

37 (4) ~~Be dismissed.~~

38 (e) ~~After making a determination under subdivision (d), a special~~
39 ~~litigation committee shall file with the court a statement of its~~
40 ~~determination and its report supporting its determination, giving~~

1 ~~notice to the plaintiff. The court shall determine whether the~~
2 ~~members of the committee were disinterested and independent and~~
3 ~~whether the committee conducted its investigation and made its~~
4 ~~recommendation in good faith, independently, and with reasonable~~
5 ~~care, with the committee having the burden of proof. If the court~~
6 ~~finds that the members of the committee were disinterested and~~
7 ~~independent and that the committee acted in good faith,~~
8 ~~independently, and with reasonable care, the court shall enforce~~
9 ~~the determination of the committee. Otherwise, the court shall~~
10 ~~dissolve the stay of discovery entered under subdivision (a) and~~
11 ~~allow the action to proceed under the direction of the plaintiff.~~
12

13 Article 10. Merger and Conversion

14
15 17710.01. For purposes of this article, the following definitions
16 apply:

17 (a) “Converted entity” means the other business entity or foreign
18 other business entity or foreign limited liability company that
19 results from a conversion of a domestic limited liability company
20 under this title.

21 (b) “Converted limited liability company” means a domestic
22 limited liability company that results from a conversion of an other
23 business entity or a foreign other business entity or a foreign
24 limited liability company pursuant to Section 17710.08.

25 (c) “Converting limited liability company” means a domestic
26 limited liability company that converts to an other business entity
27 or a foreign other business entity or a foreign limited liability
28 company pursuant to this title.

29 (d) “Converting entity” means an other business entity or a
30 foreign other business entity or a foreign limited liability company
31 that converts to a domestic limited liability company pursuant to
32 Section 17710.08.

33 (e) “Constituent corporation” means a corporation that is merged
34 with or into one or more limited liability companies or other
35 business entities and that includes a surviving corporation.

36 (f) “Constituent limited liability company” means a limited
37 liability company that is merged with or into one or more other
38 limited liability companies or other business entities and that
39 includes a surviving limited liability company.

1 (g) “Constituent other business entity” means an other business
2 entity that is merged with or into one or more limited liability
3 companies and that includes a surviving other business entity.

4 (h) “Disappearing limited liability company” means a constituent
5 limited liability company that is not the surviving limited liability
6 company.

7 (i) “Disappearing other business entity” means a constituent
8 other business entity that is not the surviving other business entity.

9 (j) “Foreign other business entity” means an other business
10 entity formed under the laws of any state other than this state or
11 under the laws of a foreign country.

12 (k) “Other business entity” means a corporation, general liability
13 company, limited membership, business trust, real estate investment
14 trust, or unincorporated association, other than a nonprofit
15 association, but excludes a limited liability company.

16 (l) “Surviving limited liability company” means a limited
17 liability company into which one or more other limited liability
18 companies or other business entities are merged.

19 (m) “Surviving other business entity” means an other business
20 entity into which one or more limited liability companies are
21 merged.

22 17710.02. (a) A limited liability company may be converted
23 into an other business entity or a foreign other business entity or
24 a foreign limited liability company pursuant to this article if both
25 of the following apply:

26 (1) Pursuant to a conversion into a domestic or foreign general
27 partnership or limited partnership or into a foreign limited liability
28 company, each of the members of the converting limited liability
29 company receives a percentage interest in the profits and capital
30 of the converted entity equal to that member’s percentage interest
31 in profits and capital of the converting limited liability company
32 as of the effective time of the conversion.

33 (2) Pursuant to a conversion into an other business entity or
34 foreign other business entity not specified in paragraph (1), both
35 of the following occur:

36 (A) Each limited liability company interest of the same class is
37 treated equally with respect to any distribution of cash, property,
38 rights, interests, or securities of the converted entity, unless all
39 members of the class consent.

1 (B) The nonredeemable limited liability company interests of
2 the converting limited liability company are converted only into
3 nonredeemable interests or securities of the converted entity, unless
4 all holders of the unredeemable interests consent.

5 (b) The conversion of a limited liability company to an other
6 business entity or a foreign other business entity or a foreign
7 limited liability company may be effected only if both of the
8 following conditions are satisfied:

9 (1) The law under which the converted entity will exist expressly
10 permits the formation of that entity pursuant to a conversion.

11 (2) The limited liability company complies with all other
12 requirements of any other law that applies to conversion to the
13 converted entity.

14 17710.03. (a) A limited liability company that desires to
15 convert to an other business entity or a foreign other business entity
16 or a foreign limited liability company shall approve a plan of
17 conversion.

18 The plan of conversion shall state all of the following:

19 (1) The terms and conditions of the conversion.

20 (2) The place of the organization of the converted entity and of
21 the converting limited liability company and the name of the
22 converted entity after conversion.

23 (3) The manner of converting the membership interests of each
24 of the members into shares of, securities of, or interests in, the
25 converted entity.

26 (4) The provisions of the governing documents for the converted
27 entity, including the limited liability company articles of
28 organization and operating agreement, or articles or certificate of
29 incorporation if the converted entity is a corporation, to which the
30 holders of interests in the converted entity are to be bound.

31 (5) Any other details or provisions that are required by the laws
32 under which the converted entity is organized, or that are desired
33 by the parties.

34 (b) (1) The plan of conversion shall be approved by all
35 managers and a majority in interest of each class of membership
36 interest or if there are no managers, a majority in interest of each
37 class of membership of the converting limited liability company,
38 unless a greater or lesser approval is required by the operating
39 agreement of the converting limited liability company.

1 (2) However, if the members of the limited liability company
2 would become personally liable for any obligations of the
3 converted entity as a result of the conversion, the plan of
4 conversion shall be approved by all of the limited members of the
5 converting limited liability company, unless the plan of conversion
6 provides that all members will have dissenters' rights as provided
7 in Article 11 (commencing with Section 17711.01).

8 (c) Upon the effectiveness of the conversion, all members of
9 the converting limited liability company, except those that exercise
10 dissenters' rights as provided in Article 11 (commencing with
11 Section 17711.01), shall be deemed parties to any governing
12 documents for the converted entity adopted as part of the plan of
13 conversion, regardless of whether or not the member has executed
14 the plan of conversion or the governing documents for the
15 converted entity. Any adoption of governing documents made
16 pursuant to the conversion shall be effective at the effective time
17 or date of the conversion.

18 (d) Notwithstanding its prior approval, a plan of conversion
19 may be amended before the conversion takes effect if the
20 amendment is approved by all managers and a majority of the
21 members or if there are no managers, a majority of the members
22 of the converting limited liability company and, if the amendment
23 changes any of the principal terms of the plan of conversion, the
24 amendment is approved by the managers and members of the
25 converting limited liability company in the same manner and to
26 the same extent as required for the approval of the original plan
27 of conversion.

28 (e) The managers by unanimous approval and the members of
29 a converting limited liability company may, by majority approval
30 at any time before the conversion is effective, in their discretion,
31 abandon a conversion, without further approval by the managers
32 or members, subject to the contractual rights of third parties other
33 than managers or members.

34 (f) The converted entity shall keep the plan of conversion at the
35 principal place of business of the converted entity if the converted
36 entity is a domestic limited liability company or foreign other
37 business entity, at the principal executive office of, or registrar or
38 transfer agent of, the converted entity, if the converted entity is a
39 domestic corporation, or at the office where records are to be kept
40 pursuant to Section 17701.13 if the converted entity is a domestic

1 limited liability company. Upon the request of a member of a
2 converting limited liability company, the authorized person on
3 behalf of the converted entity shall promptly deliver to the member
4 or the holder of shares, interests, or other securities, at the expense
5 of the converted entity, a copy of the plan of conversion. A waiver
6 by a member of the rights provided in this subdivision shall be
7 unenforceable.

8 17710.04. (a) A conversion into an other business entity or a
9 foreign other business entity or a foreign limited liability company
10 shall become effective upon the earliest date that all of the
11 following occur:

12 (1) The plan of conversion is approved by the members of the
13 converting limited liability company, as provided in Section
14 17710.03.

15 (2) All documents required by law to create the converted entity
16 are filed, which documents shall also contain a statement of
17 conversion, if required under Section 17710.06.

18 (3) The effective date, if set forth in the plan of conversion,
19 occurs.

20 (b) A copy of the statement of ~~limited liability company~~
21 *partnership* authority or articles of organization complying with
22 Section 17710.06, if applicable, duly certified by the Secretary of
23 State, is conclusive evidence of the conversion of the limited
24 liability company.

25 17710.05. (a) If the limited liability company is converting
26 into a foreign limited liability company or foreign other business
27 entity, those conversion proceedings shall be in accordance with
28 the laws of the state or place of organization of the foreign limited
29 liability company or foreign other business entity and the
30 conversion shall become effective in accordance with that law.

31 (b) (1) To enforce an obligation of a limited liability company
32 that has converted to a foreign limited liability company or foreign
33 other business entity, the Secretary of State shall only be the agent
34 for service of process in an action or proceeding against that
35 converted foreign entity, if the agent designated for the service of
36 process for that entity is a natural person and cannot be found with
37 due diligence or if the agent is a corporation and no person, to
38 whom delivery may be made, may be located with due diligence,
39 or if no agent has been designated and if none of the officers,
40 members, managers, or agents of that entity may be located after

1 diligent search, and it is shown by affidavit to the satisfaction of
2 the court. The court then may make an order that service be made
3 by personal delivery to the Secretary of State or to an assistant or
4 Deputy Secretary of State of two copies of the process together
5 with two copies of the order, and the order shall set forth an address
6 to which the process shall be sent by the Secretary of State. Service
7 in this manner is deemed complete on the 10th day after delivery
8 of the process to the Secretary of State.

9 (2) Upon receipt of the process and order and the fee set forth
10 in Section 12206 of the Government Code, the Secretary of State
11 shall provide notice to that entity of the service of the process by
12 forwarding by certified mail, return receipt requested, a copy of
13 the process and order to the address specified in the order.

14 (3) The Secretary of State shall keep a record of all process
15 served upon the Secretary of State and shall record the time of
16 service and the Secretary of State's action with respect to the
17 process served. The certificate of the Secretary of State, under the
18 Secretary of State's official seal, certifying to the receipt of process,
19 the providing of notice of process to that entity, and the forwarding
20 of the process shall be competent and prima facie evidence of the
21 matters stated therein.

22 17710.06. (a) Upon conversion of a limited liability company,
23 one of the following applies:

24 (1) If the limited liability company is converting into a domestic
25 limited partnership, a statement of conversion shall be completed
26 on a certificate of limited partnership for the converted entity and
27 shall be filed with the Secretary of State.

28 (2) If the limited liability company is converting into a domestic
29 partnership, a statement of conversion shall be completed on the
30 statement of partnership authority for the converted entity. If no
31 statement of partnership authority is filed, a certificate of
32 conversion shall be filed separately with the Secretary of State.

33 (3) If the limited liability company is converting into a domestic
34 corporation, a statement of conversion shall be completed on the
35 articles of incorporation for the converted entity and shall be filed
36 with the Secretary of State.

37 (4) If the limited liability company is converting to a foreign
38 limited liability company or foreign other business entity, a
39 certificate of conversion shall be filed with the Secretary of State.

1 (b) Any certificate or statement of conversion shall be executed
2 and acknowledged by all members, unless a lesser number is
3 provided in the articles of organization or operating agreement,
4 and shall set forth all of the following:

5 (1) The name and the Secretary of State's file number of the
6 converting limited liability company.

7 (2) A statement that the principal terms of the plan of conversion
8 were approved by a vote of the members, that equaled or exceeded
9 the vote required under Section 17710.03, specifying each class
10 entitled to vote and the percentage vote required of each class.

11 (3) The form of organization of the converted entity.

12 (4) The mailing address of the converted entity's agent for
13 service of process and the chief executive office of the converted
14 entity.

15 (c) The filing with the Secretary of State of a certificate of
16 conversion or a statement of partnership authority, articles of
17 organization, or articles of incorporation containing a statement
18 of conversion as set forth in subdivision (a) shall have the effect
19 of the filing of a certificate of cancellation by the converting limited
20 liability company, and no converting limited liability company
21 that has made the filing is required to take any action under Article
22 7 (commencing with Section 17707.01) as a result of that
23 conversion.

24 17710.07. (a) Whenever a limited liability company or other
25 business entity having any real property in this state converts into
26 a limited liability company or an other business entity pursuant to
27 the laws of this state or of the state or place where the limited
28 liability company or other business entity was organized, and the
29 laws of the state or place of organization, including this state, of
30 the converting limited liability company or other converting entity
31 provide substantially that the conversion vests in the converted
32 limited liability company or other converted entity all the real
33 property of the converting limited liability company or other
34 converting entity, the filing for record in the office of the county
35 recorder of any county in this state where any of the real property
36 of the converting limited liability company or other converting
37 entity is located shall evidence record ownership in the converted
38 limited liability company or other converted entity of all interest
39 of the converting limited liability company or other converting

1 entity in and to the real property located in that county if both of
2 the following apply:

3 (1) A certificate of conversion or statement of partnership
4 authority, certificate of limited partnership, or articles of
5 organization complying with Section 17710.06, in the form
6 prescribed and certified by the Secretary of State.

7 (2) A copy of a certificate of conversion on a statement of
8 limited partnership authority, certificate of limited partnership,
9 articles of organization, articles of incorporation, or other certificate
10 or document evidencing the creation of a foreign other business
11 entity or foreign limited liability company by conversion,
12 containing a statement of conversion, certified by the Secretary of
13 State or an authorized public official of the state or place pursuant
14 to the laws of which the conversion is effected.

15 (b) A filed and, if appropriate, recorded certificate of conversion
16 or a statement of partnership authority, certificate of limited
17 partnership, articles of organization, articles or certificate of
18 incorporation, or other certificate evidencing the creation of a
19 foreign other business entity or foreign limited liability company
20 by conversion, containing a statement of conversion, filed pursuant
21 to subdivision (a) of Section 17710.06, stating the name of the
22 converting limited liability company or other converting entity in
23 whose name property was held before the conversion and the name
24 of the converted entity or converted limited liability company, but
25 not containing all of the other information required by Section
26 17710.06, operates with respect to the entities named to the extent
27 provided in subdivision (a).

28 (c) Recording of a certificate of conversion, or a statement of
29 partnership authority, certificate of limited partnership, articles of
30 organization, articles of incorporation, or other certificate
31 evidencing the creation of an other business entity or a limited
32 liability company by conversion, containing a statement of
33 conversion, in accordance with subdivision (a), shall create, in
34 favor of bona fide purchasers or encumbrances for value, a
35 conclusive presumption that the conversion was validly completed.

36 17710.08. (a) An other business entity or a foreign other
37 business entity or a foreign limited liability company may be
38 converted to a domestic limited liability company pursuant to this
39 article only if the converting entity is authorized by the laws
40 pursuant to which it is organized to effect the conversion.

1 (b) An other business entity or a foreign other business entity
2 or a foreign limited liability company that desires to convert into
3 a domestic limited liability company shall approve a plan of
4 conversion or another instrument as is required to be approved to
5 effect the conversion pursuant to the laws under which that entity
6 is organized.

7 (c) The conversion of an other business entity or a foreign other
8 business entity or a foreign limited liability company into a
9 domestic limited liability company shall be approved by the
10 number or percentage of the members, managers, shareholders, or
11 holders of interest of the converting entity as is required by the
12 laws under which that entity is organized, or a greater or lesser
13 percentage, subject to applicable laws, as set forth in the converting
14 entity's partnership agreement, articles of organization, operating
15 agreement, articles or certificate of incorporation, or other
16 governing document.

17 (d) The conversion by an other business entity or a foreign other
18 business entity or a foreign limited liability company into a
19 domestic limited liability company shall be effective under this
20 article at the time the conversion is effective under the laws under
21 which the converting entity is organized, as long as the articles of
22 organization containing a statement of conversion has been filed
23 with the Secretary of State. If the converting entity's governing
24 law is silent as to the effectiveness of the conversion, the
25 conversion shall be effective upon the completion of all acts
26 required under this title to form a limited liability company.

27 (e) The filing with the Secretary of State of a certificate of
28 conversion or articles of organization containing a statement of
29 conversion pursuant to subdivision (a) shall have the effect of the
30 filing of a certificate of cancellation by the converting foreign
31 limited liability company or foreign limited liability company and
32 no converting foreign limited liability company or foreign limited
33 liability company that has made the filing is required to take any
34 action under Article 7 (commencing with Section ~~17701.01~~)
35 *17707.01*) concerning dissolution as a result of that conversion.
36 If a converting other business entity is a foreign corporation
37 qualified to transact business in this state, the foreign corporation
38 shall, by virtue of the filing, automatically surrender its right to
39 transact intrastate business.

1 17710.09. (a) An entity that converts into another entity
2 pursuant to this article is for all purposes other than for the purposes
3 of Part 10 (commencing with Section 17701), Part 10.20
4 (commencing with Section 18401), and Part 11 (commencing with
5 Section 23001) of Division 2 of the Revenue and Taxation Code,
6 the same entity that existed before the conversion and the
7 conversion shall not be deemed a transfer of property.

8 (b) Upon a conversion taking effect, all of the following apply:

9 (1) All the rights and property, whether real, personal, or mixed,
10 of the converting entity or converting limited liability company
11 are vested in the converted entity or converted limited liability
12 company.

13 (2) All debts, liabilities, and obligations of the converting entity
14 or converting limited liability company continue as debts,
15 liabilities, and obligations of the converted entity or converted
16 limited liability company.

17 (3) All rights of creditors and liens upon the property of the
18 converting entity or converting limited liability company shall be
19 preserved unimpaired and remain enforceable against the converted
20 entity or converted limited liability company to the same extent
21 as against the converting entity or converting limited liability
22 company as if the conversion had not occurred.

23 (4) Any action or proceeding pending by or against the
24 converting entity or converting limited liability company may be
25 continued against the converted entity or converted limited liability
26 company as if the conversion had not occurred.

27 (c) A member of a converting limited liability company is liable
28 for all of the following:

29 (1) All obligations of the converting limited liability company
30 for which the member was personally liable before the conversion.

31 (2) All obligations of the converted entity incurred after the
32 conversion takes effect, but those obligations may be satisfied only
33 out of property of the entity if that member of a limited liability
34 company, or a shareholder in a corporation, or unless expressly
35 provided otherwise in the articles of organization or other
36 governing documents, a limited partner of a limited partnership,
37 or a holder of equity securities in another converted entity if the
38 holders of equity securities in that entity are not personally liable
39 for the obligations of that entity under the law under which the
40 entity is organized or its governing documents.

(3) A member of a converted limited liability company remains liable for any and all obligations of the converting entity for which the member was personally liable before the conversion, but only to the extent that the member was liable for the obligations of the converting entity prior to the conversion.

17710.10. Mergers of limited liability companies shall be governed by Sections 17710.11 to 17710.19, inclusive.

17710.11. The following entities may be merged pursuant to this article:

(a) Two or more limited liability companies into one limited liability company.

(b) One or more limited liability companies and one or more other business entities into one of those other business entities.

(c) (1) One or more limited liability companies and one or more other business entities into one limited liability company.

(2) Notwithstanding this section, the merger of any number of limited liability companies with any number of other business entities may be effected only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and the following apply:

(A) If a limited liability company is the surviving limited liability company, the foreign other business entities are not prohibited by the laws under which they are organized from effecting that merger.

If

(B) If a foreign limited liability company or foreign other business entity is the survivor of the merger, the laws of the jurisdiction under which the survivor is organized authorize that merger. Notwithstanding the first sentence of this paragraph, if one or more domestic corporations is also a party to the merger described in that sentence, the merger may be effected only if, with respect to any foreign other business entity that is a corporation, the foreign corporation is authorized by the laws under which it is organized to effect that merger.

17710.12. (a) Each limited liability company and other business entity that desires to merge shall approve an agreement of merger.

The agreement of merger shall be approved by all managers and a majority in interest of each class of membership interests of each constituent limited liability company, unless a greater approval is

required by the operating agreement of the constituent limited liability company. Notwithstanding the previous sentence, if the members of any constituent limited liability company become personally liable for any obligations of a constituent limited liability company or constituent other business entity as a result of the merger, the principal terms of the agreement of merger shall be approved by all of the members of the constituent limited liability company, unless the agreement of merger provides that all members shall have the dissenters' rights provided in Article 11 (commencing with Section 17711.01). The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons, including a parent of a constituent limited liability company, may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of the organization of the surviving limited liability company or surviving other business entity, and of each disappearing limited liability company and disappearing other business entity, and the agreement of merger may change the name of the surviving limited liability company, the new name may be the same as or similar to the name of a disappearing domestic or foreign limited liability company, subject to Section 17710.08.

(3) The manner of converting the membership interests of each of the constituent limited liability companies into interests, shares, or other securities of the surviving limited liability company or surviving other business entity, and if limited liability company interests of any of the constituent limited liability companies are not to be converted solely into interests, shares, or other securities of the surviving limited liability company or surviving other business entity, the cash, property, rights, interests, or securities that the holders of the limited liability company interests are to receive in exchange for the membership interests, the cash, property, rights, interests, or securities that may be in addition to or in lieu of interests, shares, or other securities of the surviving limited liability company or surviving other business entity, or that the *limited* liability company interests are canceled without consideration.

1 (4) Any other details or provisions that are required by the laws
2 under which any constituent other business entity is organized,
3 including, if a domestic corporation is a party to the merger, as
4 provided in subdivision (b) of Section ~~17711.13~~ 17710.14.

5 (5) Any other details or provisions that are desired, including,
6 without limitation, a provision for the treatment of fractional
7 membership interests.

8 (b) (1) Each membership interest of the same class of any
9 constituent limited liability company, other than a membership
10 interest in another constituent limited liability company that is
11 being canceled and that is held by a constituent limited liability
12 company or its parent or a limited liability company of which the
13 constituent limited liability company is a parent shall, unless all
14 members of the class consent, be treated equally with respect to
15 any distribution of cash, property, rights, interests, or securities.

16 (2) Notwithstanding paragraph (1), except in a merger of a
17 limited liability company with a limited liability company that
18 controls at least 90 percent of the membership interests entitled to
19 vote with respect to the merger, the unredeemable membership
20 interests of a constituent limited liability company may be
21 converted only into unredeemable interests or securities of the
22 surviving limited liability company or other business entity, or a
23 parent if a constituent limited liability company or a constituent
24 other business entity or its parent owns, directly or indirectly, prior
25 to the merger, membership interests of another constituent limited
26 liability company or interests or securities of a constituent other
27 business entity representing more than 50 percent of the interests
28 or securities entitled to vote with respect to the merger of the other
29 constituent limited liability company or constituent other business
30 entity or more than 50 percent of the voting power, as defined in
31 Section 194.5, of a constituent other business entity that is a
32 domestic corporation, unless all of the members of the class
33 consent.

34 (3) This subdivision shall apply only to constituent limited
35 liability companies with over 35 members.

36 (c) Notwithstanding its prior approval, an agreement of merger
37 may be amended prior to the filing of the certificate of merger or
38 the agreement of merger, as provided in Section 17710.14, if the
39 amendment is approved by the managers and members of each
40 constituent limited liability company in the same manner as

1 required for approval of the original agreement of merger and, if
2 the amendment changes any of the principal terms of the agreement
3 of merger, the amendment is approved by the managers and
4 members of each constituent limited liability company in the same
5 manner and to the same extent as required for the approval of the
6 original agreement of merger, and by each of the constituent other
7 business entities.

8 (d) The managers and members of a constituent limited liability
9 company may, in their discretion, abandon a merger, subject to
10 the contractual rights, if any, of third parties, including other
11 constituent limited liability companies and constituent other
12 business entities, without further approval by the membership
13 interests, at any time before the merger is effective.

14 (e) An agreement of merger approved in accordance with
15 subdivision (a) may do the following:

16 (1) Effect any amendment to the operating agreement of any
17 constituent limited liability company.

18 (2) Effect the adoption of a new operating agreement for a
19 constituent limited liability company if it is the surviving limited
20 liability company in the merger. Any amendment to an operating
21 agreement or adoption of a new operating agreement made pursuant
22 to the foregoing sentence shall be effective at the effective time
23 or date of the merger. Notwithstanding the above provisions of
24 this subdivision, if a greater number of members is required to
25 approve an amendment to the operating agreement of a constituent
26 limited liability company than is required to approve the agreement
27 of merger pursuant to subdivision (a), and the number of members
28 that approve the agreement of merger is less than the number of
29 members required to approve an amendment to the operating
30 agreement of the constituent limited liability company, any
31 amendment to the operating agreement or adoption of a new
32 operating agreement of that constituent limited liability company
33 made pursuant to the first sentence of this subdivision shall be
34 effective only if the agreement of merger provides that all of the
35 members shall have the dissenters' rights provided in Article 11
36 (commencing with Section 17711.01).

37 (f) The surviving limited liability company or surviving other
38 business entity shall keep the agreement of merger at its designated
39 office or at the business address specified in paragraph (5) of
40 subdivision (a) of Section 17710.14, as applicable, and, upon the

1 request of a member of a constituent limited liability company or
2 a holder of shares, interests, or other securities of a constituent
3 other business entity, the managers or members of the surviving
4 limited liability company or the authorized person of the surviving
5 other business entity shall promptly deliver to the member or the
6 holder of shares, interests, or other securities, at the expense of the
7 surviving limited liability company or surviving other business
8 entity, a copy of the agreement of merger. A waiver by a member
9 or holder of shares, interests, or other securities of the rights
10 provided in this subdivision shall be unenforceable.

11 17710.13. Subdivision (b) of Section 17710.12 shall not apply
12 to any transaction if the commissioner has approved the terms and
13 conditions of the transaction and the fairness of such terms and
14 conditions pursuant to Section 25142.

15 17710.14. (a) If the surviving entity is a limited liability
16 company or an other business entity, other than a corporation in a
17 merger in which a domestic corporation is a constituent party, after
18 approval of a merger by the constituent limited liability companies
19 and any constituent other business entities, the constituent limited
20 liability companies and constituent other business entities shall
21 file a certificate of merger in the office of, and on a form prescribed
22 by, the Secretary of State. The certificate of merger shall be
23 executed and acknowledged by each domestic constituent limited
24 liability company by all managers, or if none, all members unless
25 a lesser number is provided in the articles of organization or
26 operating agreement of the domestic constituent limited liability
27 company and by each foreign constituent limited liability company
28 by one or more managers, or if none, members, and by each
29 constituent other business entity by those persons required to
30 execute the certificate of merger by the laws under which the
31 constituent other business entity is organized. The certificate of
32 merger shall set forth all of the following:

33 (1) The names and the Secretary of State's file numbers, if any,
34 of each of the constituent limited liability companies and
35 constituent other business entities, separately identifying the
36 disappearing limited liability companies and disappearing other
37 business entities and the surviving limited liability company or
38 surviving other business entity.

39 (2) If a vote of the members was required pursuant to Section
40 17710.12, a statement setting forth the total number of outstanding

1 interests of each class entitled to vote on the merger and that the
2 principal terms of the agreement of merger were approved by a
3 vote of the number of interests of each class that equaled or
4 exceeded the vote required, specifying each class entitled to vote
5 and the percentage vote required of each class.

6 (3) If the surviving entity is a limited liability company and not
7 an other business entity, any change required to the information
8 set forth in the articles of organization of the surviving limited
9 liability company resulting from the merger, including any change
10 in the name of the surviving limited liability company resulting
11 from the merger. The filing of a certificate of merger setting forth
12 any such changes to the articles of organization of the surviving
13 limited liability company shall have the effect of the filing of a
14 certificate of amendment by the surviving limited liability
15 company, and the surviving limited liability company need not
16 file an amendment under Section 17702.02 to reflect those changes.

17 (4) The future effective date, that shall be a date certain not
18 more than 90 days subsequent to the date of filing of the merger,
19 if the merger is not to be effective upon the filing of the certificate
20 of merger with the office of the Secretary of State.

21 (5) If the surviving entity is an other business entity or a foreign
22 limited liability company, the full name of the entity, type of entity,
23 legal jurisdiction where the entity was organized and by whose
24 laws its internal affairs are governed, and the address of the
25 principal place of business of the entity.

26 (6) Any other information required to be stated in the certificate
27 of merger by the laws where each constituent other business entity
28 is organized, including, if a domestic corporation is a party to the
29 merger, ~~as or~~ required under paragraph (2) of subdivision (g) of
30 Section ~~17711.13~~ 1113. If the surviving entity is a foreign limited
31 liability company in a merger where a domestic corporation is a
32 disappearing other business entity, a copy of the agreement of
33 merger and attachments as required under paragraph (1) of
34 subdivision (g) of Section ~~17711.13~~ 1113 shall be filed at the same
35 time as the filing of the certificate of merger.

36 (b) If the surviving entity is a domestic corporation or a foreign
37 corporation in a merger that a domestic corporation is a constituent
38 party, after approval of the merger by the constituent limited
39 liability companies and constituent other business entities, the
40 surviving corporation shall file in the office of the Secretary of

1 State a copy of the agreement of merger and attachments required
2 under paragraph (1) of subdivision (g) of Section ~~17711.13~~ 1113.
3 The certificate of merger shall be executed and acknowledged by
4 each domestic constituent limited liability company by all general
5 members, unless a lesser number is provided in the articles of
6 organization of limited liability company of the domestic
7 constituent limited liability company.

8 (c) A certificate of merger or the agreement of merger, as is
9 applicable under subdivisions (a) and (b), shall have the effect of
10 the filing of a certificate of cancellation for each disappearing
11 limited liability company, and no disappearing limited liability
12 company need take any action under Article 7 (commencing with
13 Section 17707.01) concerning dissolution as a result of the merger.

14 ~~(d) If the organization disappearing into the other business entity~~
15 ~~is a foreign corporation qualified to transact intrastate business in~~
16 ~~this state, a certificate of satisfaction of the Franchise Tax Board~~
17 ~~as required by Section 23334 of the Revenue and Taxation Code~~
18 ~~shall be filed with the certificate of merger or agreement of merger,~~
19 ~~as is applicable under subdivisions (a) and (b).~~

20 By the filing of the certificate of merger or agreement of merger,
21 as is applicable, the foreign corporation shall automatically
22 surrender its right to transact intrastate business.

23 17710.15. (a) Unless a future effective date is provided in a
24 certificate of merger or the agreement of merger, if an agreement
25 of merger is required to be filed under Section 17710.14, in which
26 event the merger shall be effective at that future effective date, a
27 merger shall be effective upon the filing of the certificate of merger
28 or the agreement of merger, as is applicable, in the office of the
29 Secretary of State.

30 (b) (1) For all purposes, a copy of the certificate of merger duly
31 certified by the Secretary of State is conclusive evidence of the
32 merger of the constituent limited liability companies, either by
33 themselves or together with constituent other business entities,
34 into the surviving other business entity, or the constituent limited
35 liability companies or the constituent other business entities, or
36 both, into the surviving limited liability company.

37 (2) In a merger in which the surviving entity is a corporation in
38 a merger in which a domestic corporation and a domestic limited
39 liability company are parties to the merger, a copy of an agreement
40 of merger certified on or after the effective date by an official

1 having custody thereof has the same force in evidence as the
2 original and, except as against the state, is conclusive evidence of
3 the performance of all conditions precedent to the merger, the
4 existence on the effective date of the surviving corporation, and
5 the performance of the conditions necessary to the adoption of any
6 amendment to the articles of incorporation of the surviving
7 corporation, if applicable, contained in the agreement of merger.

8 17710.16. (a) Upon a merger of limited liability companies
9 or limited liability companies and other business entities pursuant
10 to this chapter, the separate existence of the disappearing limited
11 liability companies and disappearing other business entities ceases
12 and the surviving limited liability company or surviving other
13 business entity shall succeed, without other transfer, act or deed,
14 to all the rights and property, whether real, personal, or mixed, of
15 each of the disappearing limited liability companies and
16 disappearing other business entities, and shall be subject to all the
17 debts and liabilities of each in the same manner as if the surviving
18 limited liability company or surviving other business entity had
19 itself incurred them.

20 (b) All rights of creditors and all liens upon the property of each
21 of the constituent limited liability companies and constituent other
22 business entities shall be preserved unimpaired and may be
23 enforced against the surviving limited liability company or the
24 surviving other business entity to the same extent as if the debt,
25 liability, or duty which gave rise to that lien had been incurred or
26 contracted by the surviving limited liability company or the
27 surviving other business entity, provided that such liens upon the
28 property of a disappearing limited liability company or
29 disappearing other business entity shall be limited to the property
30 affected thereby immediately prior to the time the merger is
31 effective.

32 (c) Any action or proceeding pending by or against any
33 disappearing limited liability company or disappearing other
34 business entity may be prosecuted to judgment, which shall bind
35 the surviving limited liability company or surviving other business
36 entity, or the surviving limited liability company or surviving other
37 business entity may be proceeded against or be substituted in the
38 place of the disappearing limited liability company or disappearing
39 other business entity.

(d) Nothing in this article is intended to affect the liability a member of a disappearing limited liability company may have in connection with the debts and liabilities of the disappearing limited liability company existing prior to the time the merger is effective.

17710.17. (a) If the surviving entity is a domestic limited liability company or a domestic other business entity, the merger proceedings with respect to that limited liability company or other business entity and any domestic disappearing limited liability company shall conform to the provisions of this chapter governing the merger of domestic limited liability companies, but if the surviving entity is a foreign limited liability company or a foreign other business entity, then, subject to the requirements of subdivision (d) and Article 11 (commencing with Section 17711.01) and, with respect to any domestic constituent corporation, Section ~~17711.13~~ 1113, and Chapter 12 (commencing with Section ~~17712.00~~ 1200), and Chapter 13 (commencing with Section ~~17713.00~~ 1300) of Division 1 of Title 1, the merger proceedings may be in accordance with the laws of the state or place of organization of the surviving limited liability company or surviving other business entity.

(b) If the surviving entity is a domestic limited liability company or domestic other business entity, other than a domestic corporation, the certificate of merger shall be filed as provided in subdivision (a) of Section 17710.14, and thereupon, subject to subdivision (a) of Section 17710.15, the merger shall be effective as to each domestic constituent limited liability company and domestic constituent other business entity. If the surviving entity is a domestic corporation, the agreement of merger with attachments shall be filed pursuant to ~~in~~ subdivision (b) of Section 17710.14, and thereupon, subject to subdivision (a) of Section 17710.15, the merger shall be effective as to each domestic constituent limited liability company and domestic constituent other business entity unless another effective date is provided pursuant to Article 11 (commencing with Section 17711.01) of Division 1 of Title 1, with respect to any constituent corporation or constituent limited liability company.

(c) If the surviving entity is a foreign limited liability company or foreign other business entity, the merger shall become effective in accordance with the ~~law~~ laws of the jurisdiction where the surviving limited liability company or surviving other business

1 entity is organized, but shall be effective as to any domestic
2 disappearing limited liability company as of the time of
3 effectiveness in the foreign jurisdiction upon the filing in this state
4 of a certificate of merger or agreement of merger pursuant to
5 Section 17710.14.

6 (d) If a merger described in subdivision (c) or (d) also includes
7 a foreign disappearing limited liability company previously
8 registered for the transaction of intrastate business in this state
9 pursuant to Section 17708.02, the filing of the certificate of merger
10 or agreement of merger, as is applicable under Section 17710.14,
11 automatically has the effect of a cancellation of registration for
12 that foreign limited liability company pursuant to Section 17708.07
13 without the necessity of the filing of a certificate of cancellation.

14 (e) The provisions of subdivision (b) of Section 17710.12 and
15 Article 11 (commencing with Section 17711.01) apply to the rights
16 of the members of any of the constituent limited liability companies
17 that are domestic limited liability companies and of any domestic
18 limited liability company that is a parent of any foreign constituent
19 limited liability company.

20 (f) If the surviving entity is a foreign limited liability company
21 or foreign other business entity, the surviving entity shall file the
22 following with the Secretary of State:

23 (1) An agreement that it may be served in this state in a
24 proceeding for the enforcement of an obligation of any constituent
25 entity and in a proceeding to enforce the rights of any holder of a
26 dissenting interest or dissenting shares in a constituent domestic
27 limited liability company or domestic other business entity.

28 (2) An irrevocable appointment of the Secretary of State as its
29 agent for service of process, and an address to which process may
30 be forwarded.

31 (3) An agreement that it will promptly pay the holder of any
32 dissenting interest or dissenting share in a constituent domestic
33 limited liability company or domestic other business entity the
34 amount to which that person is entitled under the laws of this state.

35 17710.18. Whenever a domestic or foreign limited liability
36 company or other business entity having any real property in this
37 state merges with another limited liability company or other
38 business entity pursuant to the laws of this state or of the state or
39 place where any constituent limited liability company or constituent
40 other business entity was organized, and the laws of the state or

1 place of organization, including this state of any disappearing
2 limited liability company or disappearing other business entity
3 provide substantially that the making and filing of the agreement
4 of merger or certificate of merger vests in the surviving limited
5 liability company or surviving other business entity all the real
6 property of any disappearing limited liability company and
7 disappearing other business entity, the filing for record in the office
8 of the county recorder of any county in this state where any of the
9 real property of the disappearing limited liability company or
10 disappearing other business entity is located of either of the
11 following shall evidence record ownership in the surviving limited
12 liability company or surviving other business entity of all interest
13 of the disappearing limited liability company or disappearing other
14 business entity in and to the real property located in that county
15 in which both of the following occur:

16 (a) A certificate of merger certified by the Secretary of State,
17 or other certificate prescribed by the Secretary of State.

18 (b) A copy of the agreement of merger or certificate of merger,
19 certified by the Secretary of State or an authorized public official
20 of the state or place pursuant to the laws of which the merger is
21 effected.

22 17710.19. Recording of the certificate of merger in accordance
23 with Section 17710.18 shall create, in favor of bona fide purchasers
24 or encumbrancers for value, a conclusive presumption that the
25 merger was validly completed.

26 17710.20. (a) Upon a merger pursuant to this chapter, a
27 surviving domestic or foreign limited liability company or other
28 business entity shall be deemed to have assumed the liability of
29 each disappearing domestic or foreign limited liability company
30 or other business entity that is taxed under Part 10 (commencing
31 with Section 17710.01) or Part 11 (commencing with Section
32 23001) of Division 2 of the Revenue and Taxation Code for the
33 following:

34 (1) To prepare and file, or to cause to be prepared and filed, tax
35 and information returns otherwise required of that disappearing
36 entity as specified in Chapter 2 (commencing with Section 18501)
37 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

38 (2) To pay any tax liability determined to be due.

39 (b) If the surviving entity is a domestic limited liability
40 company, domestic corporation, or registered limited liability

1 partnership or a foreign limited liability company, foreign limited
2 liability partnership, or foreign corporation that is registered or
3 qualified to do business in this state, the Secretary of State shall
4 notify the Franchise Tax Board of the merger.

5
6 Article 11. Dissenters' Rights
7

8 17711.01. (a) For purposes of this article, "reorganization"
9 refers to any of the following:

10 (1) A conversion pursuant to Article 10 (commencing with
11 Section 17710.01).

12 (2) A merger pursuant to Article 10 (commencing with Section
13 17710.01).

14 (3) The acquisition by one limited liability company in
15 exchange, in whole or in part, for its membership interests, or the
16 membership interests or equity securities of a limited liability
17 company or other business entity that is in control of the acquiring
18 limited liability company, of membership interests or equity
19 securities of another limited liability company or other business
20 entity if, immediately after the acquisition, the acquiring limited
21 liability company has control of the other limited liability company
22 or other business entity.

23 (4) The acquisition by one limited liability company in
24 exchange, in whole or in part, for its membership interests, or the
25 membership interests or equity securities of a limited liability
26 company or other business entity which is in control of the
27 acquiring limited liability company, or for its debt securities, or
28 debt securities of a limited liability company or other business
29 entity which is in control of the acquiring limited liability company,
30 that are not adequately secured and that have a maturity date in
31 excess of five years after the consummation of the acquisition, or
32 both, of all or substantially all of the assets of another limited
33 liability company or other business entity.

34 (b) For purposes of this article, "control" means the possession,
35 direct or indirect, of the power to direct or cause the direction of
36 the management and policies of a limited liability company or
37 other business entity.

38 17711.02. (a) If the approval of outstanding membership
39 interests is required for a limited liability company to participate
40 in a reorganization, pursuant to the limited liability company

1 agreement, or otherwise, then each member of the limited liability
2 company holding those interests may, by complying with this
3 article, require the limited liability company to purchase for cash,
4 at its fair market value, the interest owned by the member in the
5 limited liability company, if the interest is a dissenting interest as
6 defined in subdivision (b). The fair market value shall be
7 determined as of the day before the first announcement of the terms
8 of the proposed reorganization, excluding any appreciation or
9 depreciation in consequence of the proposed reorganization.

10 (b) As used in this article, “dissenting interest” means the
11 interest of a member that satisfies all of the following conditions:

12 (1) Either:

13 (A) Was not, immediately prior to the reorganization, either (i)
14 listed on any national securities exchange certified by the
15 Commissioner of Corporations under subdivision (o) of Section
16 25100, or (ii) listed on the list of OTC margin stocks issued by the
17 Board of Governors of the Federal Reserve System, provided that
18 in either instance the limited liability company whose outstanding
19 interests are so listed provides, in its notice to members requesting
20 their approval of the proposed reorganization, a summary of the
21 provisions of this section and Sections 17711.03, 17711.04,
22 17711.05, and 17711.06.

23 (B) If the interest is of a class of interests listed as described in
24 clause (i) or (ii) of subparagraph (A), demands for payment are
25 filed with respect to 5 percent or more of the outstanding interests
26 of that class.

27 (2) Was outstanding on the date for the determination of
28 members entitled to vote on the reorganization.

29 (3) Either:

30 (A) Was not voted in favor of the reorganization.

31 (B) If the interest is described in clause (i) or (ii) of subparagraph
32 (A) of paragraph (1), was voted against the reorganization;
33 provided, however, that subparagraph (A) rather than this
34 subparagraph applies in any event where the approval for the
35 proposed reorganization is sought by written consent rather than
36 at a meeting.

37 (4) The member has demanded that the interest be purchased
38 by the limited liability company at its fair market value in
39 accordance with Section 17711.03.

1 (5) The member has submitted the interest for endorsement, if
2 applicable, in accordance with Section 17711.04.

3 (c) As used in this article, “dissenting member” means the
4 recordholder of a dissenting interest, and includes an assignee of
5 record of that interest.

6 17711.03. (a) If members have a right under Section 17711.02,
7 subject to compliance with paragraphs (4) and (5) of subdivision
8 (b) of Section 17711.02, to require the limited liability company
9 to purchase their membership interests for cash, the limited liability
10 company shall mail to each member a notice of the approval of
11 the reorganization by the requisite vote or consent of the members,
12 within 10 days after the date of the approval, accompanied by a
13 copy of this section and Sections 17711.01, 17711.02, 17711.04,
14 and 17711.05, a statement of the price determined by the limited
15 liability company to represent the fair market value of its
16 outstanding interests, and a brief description of the procedure to
17 be followed if the member desires to exercise the member’s rights
18 under those sections. The statement of price constitutes an offer
19 by the limited liability company to purchase at the price stated any
20 dissenting interests as defined in subdivision (b) of Section
21 17711.02, unless they lose their status as dissenting interests under
22 Section 17711.11.

23 (b) Any member who has a right to require the limited liability
24 company to purchase the member’s interest for cash under Section
25 17711.02, subject to compliance with paragraphs (4) and (5) of
26 subdivision (b) of Section 17711.02, and who desires the limited
27 liability company to purchase that interest, shall make written
28 demand upon the limited liability company for the purchase of
29 that interest and the payment to the member in cash of its fair
30 market value. The demand is not effective for any purpose unless
31 it is received by the limited liability company or any transfer agent
32 thereof (1) in the case of interests described in clause (i) or (ii) of
33 subparagraph (A) of paragraph (1) of subdivision (b) of Section
34 17711.02, not later than the date of the members’ meeting to vote
35 upon the reorganization, or (2) in any other case, within 30 days
36 after the date on which notice of the approval of the reorganization
37 by the requisite vote or consent of the members is mailed by the
38 limited liability company to the members.

39 (c) The demand shall state the number or amount of the
40 member’s interest in the limited liability company and shall contain

1 a statement of what the member claims to be the fair market value
2 of that interest on the day before the announcement of the proposed
3 reorganization. The statement of fair market value constitutes an
4 offer by the member to sell the interest at such price.

5 17711.04. Within 30 days after the date on which notice of the
6 approval of the outstanding interests of the limited liability
7 company is mailed to the member pursuant to subdivision (a) of
8 Section 17711.03, the member shall submit to the limited liability
9 company at its principal office or at the office of any transfer agent
10 thereof, if the interest is evidenced by a certificate, the member's
11 certificate representing the interest which the member demands
12 that the limited liability company purchase, to be stamped or
13 endorsed with a statement that the interest is a dissenting interest
14 or to be exchanged for certificates of appropriate denominations
15 so stamped or endorsed, or if the interest is not evidenced by a
16 certificate, written notice of the number or amount of interest which
17 the member demands that the limited liability company purchase.
18 Upon subsequent transfers of the dissenting interest on the books
19 of the limited liability company, the new certificates or other
20 written statement issued therefor shall bear a like statement,
21 together with the name of the original holder of the dissenting
22 interest.

23 17711.05. (a) If the limited liability company and the
24 dissenting member agree that the member's interest is a dissenting
25 interest and agree upon the price to be paid for the dissenting
26 interest, the dissenting member is entitled to the agreed price with
27 interest thereon at the legal rate on judgments from the date of
28 consummation of the reorganization. All agreements fixing the
29 fair market value of any dissenting member's interest as between
30 the limited liability company and that member shall be in writing
31 and filed in the records of the limited liability company.

32 (b) Subject to the provisions of Section 17711.08, payment of
33 the fair market value for a dissenting interest shall be made within
34 30 days after the amount has been agreed to or within 30 days after
35 any statutory or contractual conditions to the reorganization are
36 satisfied, whichever is later, and in the case of dissenting interests
37 evidenced by certificates of interest, subject to surrender of such
38 certificates of interest, unless provided otherwise by agreement.

39 17711.06. (a) If the limited liability company denies that a
40 membership interest is a dissenting interest, or the limited liability

1 company and a dissenting member fail to agree upon the fair
2 market value of a dissenting interest, then the member or any
3 interested limited liability company, within six months after the
4 date when notice of the approval of the reorganization by the
5 requisite vote or consent of the members was mailed to the
6 member, but not later, may file a complaint in the superior court
7 of the proper county praying the court to determine whether the
8 interest is a dissenting interest, or the fair market value of the
9 dissenting interest, or both, or may intervene in any action pending
10 on such a complaint.

11 (b) Two or more dissenting members may join as plaintiffs or
12 be joined as defendants in any of those actions and two or more
13 of those actions may be consolidated.

14 (c) On the trial of the action, the court shall determine the issues.
15 If the status of the membership interest as a dissenting interest is
16 in issue, the court shall first determine that issue. If the fair market
17 value of the dissenting interest is in issue, the court shall determine,
18 or shall appoint one or more impartial appraisers to determine, the
19 fair market value of the dissenting interest.

20 17711.07. (a) If the court appoints an appraiser or appraisers,
21 they shall proceed forthwith to determine the fair market value per
22 interest of the outstanding membership interests of the limited
23 liability company, by class if necessary. Within the time fixed by
24 the court, the appraisers, or a majority of them, shall make and file
25 a report in the office of the clerk of the court. Thereupon, on the
26 motion of any party, the report shall be submitted to the court and
27 considered on such additional evidence as the court considers
28 relevant. If the court finds the report reasonable, the court may
29 confirm it.

30 (b) If a majority of the appraisers appointed fails to make and
31 file a report within 30 days from the date of their appointment, or
32 within a further time as may be allowed by the court, or the report
33 is not confirmed by the court, the court shall determine the fair
34 market value per interest of the outstanding membership interests
35 of the limited liability company, by class if necessary.

36 (c) Subject to Section 17711.08, judgment shall be rendered
37 against the limited liability company for payment of an amount
38 equal to the fair market value, as determined by the court, of each
39 dissenting interest that any dissenting member who is a party, or
40 has intervened, is entitled to require the limited liability company

1 to purchase, with interest thereon at the legal rate on judgments
2 from the date of consummation of the reorganization.

3 (d) Any of those judgments shall be payable forthwith, provided,
4 however, that with respect to membership interests evidenced by
5 transferable certificates of interest, only upon the endorsement and
6 delivery to the limited liability company of those certificates
7 representing the interests described in the judgment. Any party
8 may appeal from the judgment.

9 (e) The costs of the action, including reasonable compensation
10 for the appraisers, to be fixed by the court, shall be assessed or
11 apportioned as the court considers equitable, but, if the appraisal
12 exceeds the price offered by the limited liability company, the
13 limited liability company shall pay the costs, including, in the
14 discretion of the court, if the value awarded by the court for the
15 dissenting interest is more than 125 percent of the price offered
16 by the limited liability company under subdivision (a) of Section
17 17711.02, attorney's fees and fees of expert witnesses.

18 17711.08. To the extent that the payment to dissenting members
19 of the fair market value of their dissenting interests would require
20 the dissenting members to return payment or a portion of the
21 payment by reason of Section 17711.09 or the Uniform Fraudulent
22 Transfer Act (Chapter 1 (commencing with Section 3439) of Title
23 2 of Part 2 of Division 4 of the Civil Code), then that payment or
24 portion thereof shall not be made and the dissenting members shall
25 become creditors of the limited liability company for the amount
26 not paid, together with interest thereon at the legal rate on
27 judgments until the date of payment, but subordinate to all other
28 creditors in any proceeding relating to the winding up and
29 dissolution of the limited liability company, such debt to be payable
30 when permissible.

31 17711.09. Any cash distributions made by a limited liability
32 company to a dissenting member after the date of consummation
33 of the reorganization, but prior to any payment by the limited
34 liability company for that dissenting member's interest, shall be
35 credited against the total amount to be paid by the limited liability
36 company for such dissenting interest.

37 17711.10. Except as expressly limited by this article, dissenting
38 members shall continue to have all the rights and privileges incident
39 to their interests immediately prior to the reorganization, including
40 limited liability, until payment by the limited liability company

1 for their dissenting interests. A dissenting member may not
2 withdraw a demand for payment unless the limited liability
3 company consents thereto.

4 17711.11. A dissenting interest loses its status as a dissenting
5 interest and the holder thereof ceases to be a dissenting member
6 and ceases to be entitled to require the limited liability company
7 to purchase the interest upon the happening of any of the following:

8 (a) The limited liability company abandons the reorganization.

9 Upon abandonment of the reorganization, the limited liability
10 company shall pay, on demand, to any dissenting member who
11 has initiated proceeding in good faith under this article, all
12 reasonable expenses incurred in such proceedings and reasonable
13 attorney's fees.

14 (b) The interest is transferred prior to its submission for
15 endorsement in accordance with Section 17711.04.

16 (c) The dissenting member and the limited liability company
17 do not agree upon the status of the interest as a dissenting interest
18 or upon the purchase price of the dissenting interest, and neither
19 files a complaint nor intervenes in a pending action, as provided
20 in Section 17711.06, within six months after the date upon which
21 notice of the approval of the reorganization by the requisite vote
22 or consent of members was mailed to the member.

23 (d) The dissenting member, with the consent of the limited
24 liability company, withdraws the member's demand for purchase
25 of the dissenting interest.

26 17711.12. If litigation is instituted to test the sufficiency or
27 regularity of the vote or consent of the members in authorizing a
28 reorganization, any proceedings under Sections 17711.06 and
29 17711.07 shall be suspended until final determination of that
30 litigation.

31 17711.13. (a) This article applies to the following:

32 (1) A domestic limited liability company formed on or after
33 January 1, ~~2013~~ 2014.

34 (2) A foreign limited liability company if the foreign limited
35 liability company was formed on or after January 1, ~~2013~~ 2014,
36 or filed an application to qualify to do business on or after January
37 1, ~~2013~~ 2014, and members holding more than 50 percent of the
38 voting power held by all members of the foreign limited liability
39 company reside in this state.

1 (3) A limited liability company if the operating agreement so
2 provides or if all managers and a majority of the members, if it is
3 a manager-managed limited liability company, or a majority, if it
4 is a member-managed *limited* liability company, determine that
5 this article shall apply.

6 (b) This article does not apply to membership interests governed
7 by operating agreements whose terms and provisions specifically
8 set forth the amount to be paid in respect of those interests in the
9 event of a reorganization of the limited liability company, or to
10 any limited liability company with 35 or fewer members if all the
11 members have waived the application of this chapter in writing,
12 whether in an operating agreement or otherwise, provided that if,
13 at the time of the reorganization, the limited liability company had
14 more than 35 members, any waiver shall be ineffective as to that
15 reorganization.

16 17711.14. (a) No member of a limited liability company who
17 has a right under this article to demand payment of cash for the
18 interest owned by a member in a limited liability company shall
19 have any right at law or in equity to attack the validity of the
20 reorganization, or to have the reorganization set aside or rescinded,
21 except in an action to test whether the vote or consent of members
22 required to authorize or approve the reorganization has been
23 obtained in accordance with the procedures established therefor
24 by the operating agreement of the limited liability company.

25 (b) If one of the parties to a reorganization is directly or
26 indirectly controlled by, or under common control with, another
27 party to the reorganization, subdivision (a) shall not apply to any
28 member of the controlled party who has not demanded payment
29 of cash for the member's interest pursuant to this article; but if the
30 member institutes any action to attack the validity of the
31 reorganization or to have the reorganization set aside or rescinded,
32 the member shall not thereafter have any right to demand payment
33 of cash for the member's interest pursuant to this article.

34 (c) If one of the parties to a reorganization is directly or
35 indirectly controlled by, or under common control with, another
36 party to the reorganization, then, in any action to attack the validity
37 of the reorganization or to have the reorganization set aside or
38 rescinded, both of the following apply:

1 (1) A party to a reorganization that controls another party to a
2 reorganization shall have the burden of proving that the transaction
3 is just and reasonable as to the members of the controlled party.

4 (2) A person that controls two or more parties to a reorganization
5 shall have the burden of proving that the transaction is just and
6 reasonable as to the members of any party so controlled.

7 (d) Subdivisions (b) and (c) shall not apply if a majority of the
8 members other than members who are directly or indirectly
9 controlled by, or under common control with, another party to the
10 reorganization approve or consent to the reorganization.

11 (e) This section shall not prevent a member of a limited liability
12 company that is a party to a reorganization from bringing an action
13 against a manager of the limited liability company, the limited
14 liability company, or any person controlling a manager at law or
15 in equity as to any matters, including, without limitation, an action
16 for breach of fiduciary obligation or fraud, other than to attack the
17 validity of the reorganization or to have the reorganization set
18 aside or rescinded.

19
20 Article 12. ~~Series-Class~~ Provisions
21

22 17712.01. ~~(a) If a limited liability company complies with~~
23 ~~Section 17712.02, an~~ *The articles of organization or the operating*
24 ~~agreement may establish or provide for the establishment of one~~
25 ~~or more designated series of assets that provides either of the~~
26 ~~following: creation of classes of members having those relative~~
27 ~~rights, powers, and duties as the articles of organization or~~
28 ~~operating agreement may provide, including rights, powers, and~~
29 ~~duties senior to other classes of members.~~

30 ~~(1) Separate rights, powers, or duties with respect to specified~~
31 ~~property or obligations of the limited liability company or profits~~
32 ~~and losses of specified property or obligations.~~

33 ~~(2) A separate purpose or investment objective.~~

34 ~~(b) A series established in accordance with subdivision (a) may~~
35 ~~carry on any activity, whether or not for profit.~~

36 17712.02. ~~(a) Subject to subdivision (b) the following apply:~~

37 ~~(1) The debts, liabilities, obligations, and expenses incurred,~~
38 ~~contracted for, or otherwise existing with respect to a series shall~~
39 ~~be enforceable against the assets of that series only, and shall not~~

1 be enforceable against the assets of the limited liability company
2 generally or any other series of the limited liability company.

3 ~~(2) None of the debts, liabilities, obligations, and expenses~~
4 ~~incurred, contracted for, or otherwise existing with respect to the~~
5 ~~limited liability company generally or any other series shall be~~
6 ~~enforceable against the assets of a series.~~

7 ~~(b) Subdivision (a) applies only if all of the following apply:~~

8 ~~(1) The records maintained for that series account for the assets~~
9 ~~of that series separately from the other assets of the limited liability~~
10 ~~company or any other series.~~

11 ~~(2) The operating agreement contains a statement regarding the~~
12 ~~effect of the limitations provided in subdivision (a).~~

13 ~~(3) The limited liability company's articles of organization~~
14 ~~contains a statement that the limited liability company may have~~
15 ~~one or more series of assets subject to the limitations provided in~~
16 ~~subdivision (a).~~

17 ~~17712.03. (a) Assets of a series may be held directly or~~
18 ~~indirectly, including being held in the name of the series, in the~~
19 ~~name of the limited liability company, through a nominee, or~~
20 ~~otherwise.~~

21 ~~(b) If the records of a series are maintained in a manner so that~~
22 ~~the assets of the series can be reasonably identified by specific~~
23 ~~listing, category, type, quantity, or computational or allocational~~
24 ~~formula or procedure, including a percentage or share of any assets,~~
25 ~~or by any other method in which the identity of the assets can be~~
26 ~~objectively determined, the records are considered to satisfy the~~
27 ~~requirements of Section 17712.02.~~

28 ~~17712.04. The statement of limitation on liabilities of a series~~
29 ~~required by Section 17712.02 is sufficient even if neither of the~~
30 ~~following apply at the time the statement is made:~~

31 ~~(a) The limited liability company has established any series~~
32 ~~under this title when the statement of limitations is contained in~~
33 ~~the articles of organization.~~

34 ~~(b) The statement of limitations makes reference to a specific~~
35 ~~series of the limited liability company.~~

36 ~~17712.05. (a) Except to the extent the operating agreement~~
37 ~~specifically provides otherwise, a member or manager associated~~
38 ~~with a series or a member or manager of the limited liability~~
39 ~~company is not liable for a debt, obligation, or liability of a series;~~

1 including a debt, obligation, or liability under a judgment, decree,
2 or court order.

3 (b) ~~As provided in Section 17701.10, the operating agreement~~
4 ~~may expand or restrict any duties, including fiduciary duties, and~~
5 ~~related liabilities that a member, manager, officer, or other person~~
6 ~~of a series has with respect to any of the following:~~

7 ~~(1) The series or the limited liability company.~~

8 ~~(2) A member or manager of the series.~~

9 ~~(3) A member or manager of the limited liability company.~~

10 ~~17712.06. (a) An event that under this article or the operating~~
11 ~~agreement causes a manager to cease to be a manager with respect~~
12 ~~to a series does not, in and of itself, cause the manager to cease to~~
13 ~~be a manager of the limited liability company or with respect to~~
14 ~~any other series of the limited liability company.~~

15 ~~(b) An event that under this article or the operating agreement~~
16 ~~causes a member to dissociate as a member of a series does not,~~
17 ~~in and of itself, cause the member to cease to be a member of any~~
18 ~~other series or terminate the continued membership of a member~~
19 ~~in the limited liability company or require the winding up of the~~
20 ~~series, regardless of whether the member was the last remaining~~
21 ~~member of the series.~~

22 ~~17712.07. (a) A person has the power to dissociate as a~~
23 ~~member of a series at any time, rightfully or wrongfully, by~~
24 ~~withdrawing as a member of a series by express will under Section~~
25 ~~17712.08.~~

26 ~~(b) A person's dissociation from a series is wrongful only if~~
27 ~~subdivision (a) of at least one of the following applies:~~

28 ~~(1) The dissociation is in breach of an express provision of the~~
29 ~~operating agreement.~~

30 ~~(2) The dissociation occurs before the termination of the series~~
31 ~~and at least one of the following applies:~~

32 ~~(A) The person withdraws as a member of a series by express~~
33 ~~will.~~

34 ~~(B) The person is expelled as a member of the series by judicial~~
35 ~~determination under Section 17712.04.~~

36 ~~(C) The person is dissociated as a member of a series under~~
37 ~~subdivision (h) of Section 17712.08 by being a debtor in~~
38 ~~bankruptcy.~~

1 ~~(D) In the case of a person that is not a trust other than a business~~
2 ~~trust, an estate or an individual, the person is expelled or otherwise~~
3 ~~dissociated as a member because it dissolved or terminated.~~

4 ~~(e) A person that wrongfully dissociates as a member of a series~~
5 ~~is liable to the series and, subject to Section 17706.01, to the other~~
6 ~~members of that series for damages caused by the dissociation.~~

7 ~~The liability is in addition to any other debt, obligation, or~~
8 ~~liability of the member of a series to the series or the other~~
9 ~~members of that series.~~

10 ~~17712.08. A person is dissociated as a member of a series when~~
11 ~~any of the following occur:~~

12 ~~(a) The series has notice of the person's express will to~~
13 ~~dissociate from the series, except if the person specifies a~~
14 ~~dissociation date later than the date the series had notice, the person~~
15 ~~is dissociated from the series on that later date.~~

16 ~~(b) An event stated in the operating agreement as causing the~~
17 ~~person's dissociation from the series occurs.~~

18 ~~(c) The person is dissociated as a member of the limited liability~~
19 ~~company pursuant to Section 17706.02.~~

20 ~~(d) The person is expelled as a member of that series pursuant~~
21 ~~to the operating agreement.~~

22 ~~(e) The person is expelled as a member of the series by the~~
23 ~~unanimous consent of the other members of that series if any of~~
24 ~~the following applies:~~

25 ~~(1) It is unlawful to carry on the series' activities with the person~~
26 ~~as a member of that series.~~

27 ~~(2) There has been a transfer of all of the person's transferrable~~
28 ~~interest other than a transfer for security purposes, or a charging~~
29 ~~order in effect under Section 17705.03 that has not been foreclosed.~~

30 ~~(3) The person is a corporation and, within 90 days after the~~
31 ~~series notifies the person that it will be expelled as a member of~~
32 ~~that series because the person has filed a certificate of dissolution~~
33 ~~or the equivalent, or its right to conduct activities has been~~
34 ~~suspended by its jurisdiction of formation, the certificate of~~
35 ~~dissolution or the equivalent has not been revoked or its right to~~
36 ~~conduct activities has not been reinstated.~~

37 ~~(4) The person is a limited liability company or partnership that~~
38 ~~has been dissolved and its business is being wound up.~~

1 ~~(f) On application by the series, the person is expelled as a~~
2 ~~member of that series by judicial order because the person has~~
3 ~~done any of the following:~~

4 ~~(1) Has engaged in, or is engaging in, wrongful conduct that~~
5 ~~has adversely and materially affected, or will adversely and~~
6 ~~materially affect, that series' activities.~~

7 ~~(2) Has willfully or persistently committed, or is willfully and~~
8 ~~persistently committing, a material breach of the operating~~
9 ~~agreement or the person's duty or obligation under this title or~~
10 ~~other applicable law.~~

11 ~~(3) Has engaged in, or is engaging in, conduct relating to that~~
12 ~~series' activities that makes it not reasonably practicable to carry~~
13 ~~on the activities with the person as a member of that series.~~

14 ~~(g) In the case of a person who is an individual, one of the~~
15 ~~following applies:~~

16 ~~(1) The person dies.~~

17 ~~(2) In a member-managed limited liability company either a~~
18 ~~guardian or general conservator is appointed, or there is a judicial~~
19 ~~order that the person has otherwise become incapable of performing~~
20 ~~the person's duties as a member of a series under this title or the~~
21 ~~operating agreement.~~

22 ~~(h) The person becomes a debtor in bankruptcy.~~

23 ~~(i) In the case of a person that is a trust or is acting as a member~~
24 ~~by virtue of being a trustee of a trust, the trust's entire transferrable~~
25 ~~interest is distributed, but not solely by reason of the substitution~~
26 ~~of a successor trustee.~~

27 ~~(j) In the case of a person that is an estate or is acting as a~~
28 ~~member by virtue of being a personal representative of an estate,~~
29 ~~the estate's entire transferrable interest, but not solely by reason~~
30 ~~of the substitution of a successor personal representative.~~

31 ~~(k) In the case of a member of a series that is not an individual,~~
32 ~~the legal existence of the member otherwise terminates.~~

33 ~~(l) The series terminates.~~

34 ~~17712.09. (a) A person who has dissociated as a member of~~
35 ~~a series shall have no right to participate in the activities and affairs~~
36 ~~of that series and is entitled only to receive the distributions to~~
37 ~~which that member would have been entitled if the member had~~
38 ~~not dissociated from that series.~~

39 ~~(b) A person's dissociation as a member of a series does not of~~
40 ~~itself discharge the person from any debt, obligation, or liability~~

1 to that series, the limited liability company or the other members
2 that the person incurred while a member of that series.

3 (e) ~~A member's dissociation from a series does not, in itself,~~
4 ~~cause the member to dissociate from any other series or require~~
5 ~~the winding up of the series unless the dissociated member was~~
6 ~~the last remaining member of the series.~~

7 (d) ~~A member's dissociation from a series does not, in itself,~~
8 ~~cause the member to dissociate from the limited liability company.~~

9 ~~17712.10. Except to the extent otherwise provided in the~~
10 ~~operating agreement, a series and its business and affairs may be~~
11 ~~wound up and terminated without causing the winding up of the~~
12 ~~limited liability company.~~

13 ~~17712.11. (a) Except as otherwise provided, the series~~
14 ~~terminates on the completion of the winding up of the business~~
15 ~~and affairs of the series in accordance with Sections 17707.03,~~
16 ~~17707.04, 17707.05, and 17707.08.~~

17 (b) ~~The limited liability company shall provide notice of the~~
18 ~~termination of a series in the manner provided in the operating~~
19 ~~agreement for notice of termination, if any.~~

20 (c) ~~The termination of the series does not affect the limitation~~
21 ~~on liabilities of the series provided by Section 17712.06.~~

22 ~~17712.12. (a) To the extent not inconsistent with this article,~~
23 ~~this article applies to a series and its associated members and~~
24 ~~managers.~~

25 (b) ~~For purposes of the application of any other provision of~~
26 ~~this title to a provision of this article, and as the context requires:~~

27 (1) ~~A reference to a "limited liability company" or a "company"~~
28 ~~means the series.~~

29 (2) ~~A reference to "member" means member of a series.~~

30 (3) ~~A reference to "manager" means manager of a series.~~

31 32 Article 13. Miscellaneous Provisions

33
34 17713.01. In applying and construing this uniform act,
35 consideration shall be given to the need to promote uniformity of
36 the law with respect to its subject matter among states that enact
37 it.

38 17713.02. This title modifies, limits, and supersedes the federal
39 Electronic Signatures in Global and National Commerce Act (15
40 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede

1 Section 101(c) of that act (15 U.S.C. Sec. 7001(c)), or authorize
2 electronic delivery of any of the notices described in Section 103(b)
3 of that act (15 U.S.C. Sec. 7003(b)).

4 17713.03. This title does not affect an action commenced,
5 proceeding brought, or right accrued before this title takes effect.

6 17713.04. (a) Before January 1, ~~2015~~ 2016, this title governs
7 only the following:

8 (1) A limited liability company formed on or after January 1,
9 ~~2013~~ 2014.

10 (2) Except as otherwise provided in ~~subdivision (e) this article,~~
11 a limited liability company formed before January 1, ~~2013~~ 2014,
12 that elects, in the manner provided in its articles of organization
13 and operating agreement or ~~by law~~ by law for amending the articles
14 of organization and operating agreement, to be subject to this title.
15 *An amendment to the articles of organization shall be required to*
16 *elect to apply this title. Unless elected pursuant to this paragraph,*
17 *this title shall not apply to a limited liability company formed*
18 *before January 1, 2014.*

19 (b) ~~Except as otherwise provided in subdivision (e), on~~ On and
20 after January 1, ~~2015~~ 2016, this title governs all limited liability
21 companies.

22 17713.06. (a) If a manager or member required by this title to
23 execute or file any document fails, after demand, to do so within
24 a reasonable time or refuses to do so, any other manager or
25 member, or any person appointed by a court of competent
26 jurisdiction, may prepare, execute, and file that document with the
27 Secretary of State.

28 (b) If there is any dispute concerning the filing of a document,
29 or the failure to file a document, any manager or member may
30 petition the superior court to direct the execution of the document.

31 (c) If the court finds that it is proper for the document to be
32 executed and that any person so designated has failed or refused
33 to execute the document, or if the court determines that any
34 document should be filed, it shall order a party to file the document,
35 on a form prescribed by the Secretary of State if appropriate, as
36 ordered by the court.

37 (d) In any action under this section, if the court finds the failure
38 of the manager or member to comply with the requirement to file
39 any document to have been without justification, the court may
40 award an amount sufficient to reimburse the managers or members

1 bringing the action for the reasonable expenses incurred by them,
2 including attorneys' fees, in connection with the action or
3 proceeding.

4 (e) Any member who is not a manager, or any person filing any
5 document under this section, shall state the statutory authority after
6 the signature on the appropriate document.

7 17713.07. (a) Every limited liability company that neglects,
8 fails, or refuses to keep or cause to be kept or maintained the
9 documents, books, and records required by Section ~~17704.11~~
10 ~~17704.10~~ to be kept or maintained shall be subject to a penalty of
11 twenty-five dollars (\$25) for each day that the failure or refusal
12 continues, beginning 30 days after receipt of written request by
13 any member that the duty be performed, up to a maximum of one
14 thousand five hundred dollars (\$1,500). The penalty shall be paid
15 to the member or members jointly making the request for
16 performance of the duty and damaged by the neglect, failure, or
17 refusal, if suit therefor is commenced within 90 days after the
18 written request is made; but the maximum daily penalty because
19 of failure to comply with any number of separate requests made
20 on any one day or for the same act shall be two hundred fifty
21 dollars (\$250).

22 (b) Upon the failure of a limited liability company, or a foreign
23 limited liability company registered to transact intrastate business
24 in this state, to file the statement required by Section 17702.09,
25 the Secretary of State shall provide a notice of that delinquency
26 to the limited liability company or foreign limited liability
27 company. The notice shall also contain information concerning
28 the application of this section, advise the limited liability company
29 or foreign limited liability company of the penalty imposed by this
30 subdivision for failure to timely file the required statement after
31 notice of delinquency has been provided by the Secretary of State,
32 and shall advise the limited liability company or foreign limited
33 liability company of its right to request relief from the Secretary
34 of State because of reasonable cause or unusual circumstances that
35 justify the failure to file. If, within 60 days after providing notice
36 of the delinquency, a statement pursuant to Section 17060 has not
37 been filed by the limited liability company or foreign limited
38 liability company, the limited liability company or foreign limited
39 liability company shall be subject to a penalty of two hundred fifty
40 dollars (\$250).

1 17713.08. Any penalty prescribed by Section 17713.07 shall
2 be in addition to any remedy by injunction or action for damages
3 or by writ of mandate for the nonperformance of acts and duties
4 enjoined by law upon the limited liability company or its managers.
5 The court in which an action for any penalty is brought may reduce,
6 remit, or suspend the penalty on any terms and conditions as it
7 may deem reasonable when it is made to appear that the neglect,
8 failure, or refusal was inadvertent or excusable.

9 17713.09. (a) Upon the failure of a limited liability company
10 to file the statement required by Section 17702.09, the Secretary
11 of State shall provide a notice of the delinquency to the limited
12 liability company. The notice shall also contain information
13 concerning the application of this section, advise the limited
14 liability company of the penalty imposed by Section 19141 of the
15 Revenue and Taxation Code for failure to timely file the required
16 statement after notice of delinquency has been mailed by the
17 Secretary of State, and shall advise the limited liability company
18 of its right to request relief from the Secretary of State because of
19 reasonable cause or unusual circumstances that justify such failure
20 to file. If, within 60 days after providing notice of the delinquency,
21 a statement pursuant to Section 17702.09 has not been filed by the
22 limited liability company, the Secretary of State shall certify the
23 name of such limited liability company to the Franchise Tax Board.

24 (b) Upon certification pursuant to subdivision (a), the Franchise
25 Tax Board shall assess against the limited liability company the
26 penalty provided in Section 19141 of the Revenue and Taxation
27 Code.

28 (c) The penalty provided by Section 19141 of the Revenue and
29 Taxation Code shall not apply to a limited liability company that
30 on or prior to the date of certification pursuant to subdivision (a)
31 has dissolved or has been merged into another limited liability
32 company or other business entity.

33 (d) The penalty herein provided shall not apply and the Secretary
34 of State need not provide notice of the delinquency to a limited
35 liability company the powers, rights and privileges of which have
36 been suspended by the Franchise Tax Board pursuant to Section
37 23301, 23301.5, or 23775 of the Revenue and Taxation Code on
38 or prior to, and remain suspended on, the last day of the filing
39 period pursuant to Section 17702.09. The Secretary of State need
40 not provide notice of the filing requirement pursuant to Section

1 17702.09 to a limited liability company the powers, rights and
2 privileges of which have been so suspended by the Franchise Tax
3 Board on or prior to, and remain suspended on, the day the
4 Secretary of State prepares the notice for sending.

5 (e) If, after certification pursuant to subdivision (a) the Secretary
6 of State finds (1) the required statement was filed or the required
7 fee was paid before the expiration of the 60-day period after
8 providing notice of the delinquency, or (2) the failure to provide
9 notice of delinquency was due to an error of the Secretary of State,
10 the Secretary of State shall promptly decertify the name of the
11 limited liability company to the Franchise Tax Board. The
12 Franchise Tax Board shall then promptly abate any penalty
13 assessed against the limited liability company pursuant to Section
14 19141 of the Revenue and Taxation Code.

15 (f) If the Secretary of State determines that the failure of a
16 limited liability company to file the statement required by Section
17 17702.09 is excusable because of reasonable cause or unusual
18 circumstances that justify such failure, the Secretary of State may
19 waive the penalty imposed by this section and by Section 19141
20 of the Revenue and Taxation Code, in which case the Secretary
21 of State shall not certify the name of the limited liability company
22 to the Franchise Tax Board, or if already certified, the Secretary
23 of State shall promptly decertify the name of the limited liability
24 company.

25 17713.10. (a) A limited liability company that (1) fails to file
26 a statement pursuant to Section 17702.09 for an applicable filing
27 period, (2) has not filed a statement pursuant to Section 17702.09
28 during the preceding 24 months, and (3) was certified for penalty
29 pursuant to Section 17713.09 for the same filing period, shall be
30 subject to suspension pursuant to this section rather than to penalty
31 pursuant to Section 17713.09.

32 (b) When subdivision (a) is applicable, the Secretary of State
33 shall notify the limited liability company that its powers, rights,
34 and privileges will be suspended after 60 days if it fails to file a
35 statement pursuant to Section 17702.09.

36 (c) After the expiration of the 60-day period without any
37 statement filed pursuant to Section 17702.09, the Secretary of State
38 shall notify the Franchise Tax Board of the suspension, and mail
39 a notice of the suspension to the limited liability company and
40 thereupon, except for the purpose of amending the articles of

1 organization to set forth a new name, the powers, rights, and
2 privileges of the limited liability company are suspended.

3 (d) A statement pursuant to Section 17702.09 may be filed
4 notwithstanding suspension of the powers, rights, and privileges
5 pursuant to this section or Section 23301 or 23301.5 of the Revenue
6 and Taxation Code. Upon the filing of a statement pursuant to
7 Section 17702.09 by a limited liability company that has suffered
8 suspension pursuant to this section, the Secretary of State shall
9 certify that fact to the Franchise Tax Board and the limited liability
10 company may thereupon be relieved from suspension unless the
11 limited liability company is held in suspension by the Franchise
12 Tax Board by reason of Section 23301 or 23301.5 of the Revenue
13 and Taxation Code.

14 17713.11. (a) Sections 17713.09 and 17713.10 apply to foreign
15 limited liability companies with respect to the statements required
16 to be filed by Section 17702.09. For this purpose, the suspension
17 of the powers, rights, and privileges of a domestic limited liability
18 company shall mean the forfeiture of the exercise of the powers,
19 rights, and privileges of a foreign limited liability company in this
20 state.

21 (b) The forfeiture of the exercise of the powers, rights, and
22 privileges of a foreign limited liability company in this state as
23 used in subdivision (a) does not prohibit the transaction of business
24 in this state by a foreign limited liability company if the business
25 transacted subsequent to the forfeiture would not, considered as
26 an entirety, require the foreign limited liability company to obtain
27 a certificate of registration pursuant to Section 17708.02.

28 17713.12. (a) A limited liability company is liable for a civil
29 penalty in an amount not exceeding one million dollars
30 (\$1,000,000) if the limited liability company does both of the
31 following:

32 (1) Has actual knowledge that a member, officer, manager, or
33 agent of the limited liability company does any of the following:

34 (A) Makes, publishes, or posts, or has made, published, or
35 posted, either generally or privately to the shareholders or other
36 persons, either of the following:

37 (i) An oral, written, or electronically transmitted report, exhibit,
38 notice, or statement of its affairs or pecuniary condition that
39 contains a material statement or omission that is false and intended
40 to give membership shares in the limited liability company a

1 materially greater or a materially less apparent market value than
2 they really possess.

3 (ii) An oral, written, or electronically transmitted report,
4 prospectus, account, or statement of operations, values, business,
5 profits, or expenditures that includes a material false statement or
6 omission intended to give membership shares in the limited liability
7 company a materially greater or a materially less apparent market
8 value than they really possess.

9 (B) Refuses or has refused to make any book entry or post any
10 notice required by law in the manner required by law.

11 (C) Misstates or conceals or has misstated or concealed from a
12 regulatory body a material fact in order to deceive a regulatory
13 body to avoid a statutory or regulatory duty, or to avoid a statutory
14 or regulatory limit or prohibition.

15 (2) Within 30 days after actual knowledge is acquired of the
16 actions described in paragraph (1), the limited liability company
17 knowingly fails to do both of the following:

18 (A) Notify the Attorney General or appropriate government
19 agency in writing, unless the limited liability company has actual
20 knowledge that the Attorney General or appropriate government
21 agency has been notified.

22 (B) Notify its members and investors in writing, unless the
23 limited liability company has actual knowledge that the members
24 and investors have been notified.

25 (b) The requirement for notification under this section is not
26 applicable if the action taken or about to be taken by the limited
27 liability company, or by a member, officer, manager, or agent of
28 the limited liability company under paragraph (1) of subdivision
29 (a), is abated within the time prescribed for reporting, unless the
30 appropriate government agency requires disclosure by regulation.

31 (c) If the action reported to the Attorney General pursuant to
32 this section implicates the government authority of an agency other
33 than the Attorney General, the Attorney General shall promptly
34 forward the written notice to that agency.

35 (d) If the Attorney General was not notified pursuant to
36 subparagraph (A) of paragraph (2) of subdivision (a), but the
37 limited liability company reasonably and in good faith believed
38 that it had complied with the notification requirements of this
39 section by notifying a government agency listed in paragraph (5)
40 of subdivision (e), no penalties shall apply.

1 (e) For purposes of this section:

2 (1) “Manager” means a person defined by subdivision (m) of
3 Section 17701.01 having both of the following:

4 (A) Management authority over the limited liability company.

5 (B) Significant responsibility for an aspect of the limited liability
6 company that includes actual authority for the financial operations
7 or financial transactions of the limited liability company.

8 (2) “Agent” means a person or entity authorized by the limited
9 liability company to make representations to the public about the
10 limited liability company’s financial condition and who is acting
11 within the scope of the agency when the representations are made.

12 (3) “Member” means a person as defined by subdivision (o) of
13 Section 17701.01 that is a member of the limited liability company
14 at the time the disclosure is required pursuant to subparagraph (B)
15 of paragraph (2) of subdivision (a).

16 (4) “Notify its members” means to give sufficient description
17 of an action taken or about to be taken that would constitute acts
18 or omissions as described in paragraph (1) of subdivision (a). A
19 notice or report filed by a limited liability company with the United
20 States Securities and Exchange Commission that relates to the
21 facts and circumstances giving rise to an obligation under
22 paragraph (1) of subdivision (a) shall satisfy all notice requirements
23 arising under paragraph (2) of subdivision (a) but shall not be the
24 exclusive means of satisfying the notice requirements, provided
25 that the Attorney General or appropriate agency is informed in
26 writing that the filing has been made together with a copy of the
27 filing or an electronic link where it is available online without
28 charge.

29 (5) “Appropriate government agency” means an agency on the
30 following list that has regulatory authority with respect to the
31 financial operations of a limited liability company:

32 (A) Department of Corporations.

33 (B) Department of Insurance.

34 (C) Department of Financial Institutions.

35 (D) Department of Managed Health Care.

36 (E) United States Securities and Exchange Commission.

37 (6) “Actual knowledge of the limited liability company” means
38 the knowledge a member, officer, or manager of a limited liability
39 company actually possesses or does not consciously avoid
40 possessing, based on an evaluation of information provided

1 pursuant to the limited liability company's disclosure controls and
2 procedures.

3 (7) "Refuse to make a book entry" means the intentional decision
4 not to record an accounting transaction when all of the following
5 conditions are satisfied:

6 (A) The independent auditors required recordation of an
7 accounting transaction during the course of an audit.

8 (B) The audit committee of the limited liability company has
9 not approved the independent auditor's recommendation.

10 (C) The decision is made for the primary purpose of rendering
11 the financial statements materially false or misleading.

12 (8) "Refuse to post any notice required by law" means an
13 intentional decision not to post a notice required by law when all
14 of the following conditions exist:

15 (A) The decision not to post the notice has not been approved
16 by the limited liability company's audit committee.

17 (B) The decision is intended to give the membership shares in
18 the limited liability company a materially greater or a materially
19 less apparent market value than they really possess.

20 (9) "Misstate or conceal material facts from a regulatory body"
21 means an intentional decision not to disclose material facts when
22 all of the following conditions exist:

23 (A) The decision not to disclose material facts has not been
24 approved by the limited liability company's audit committee.

25 (B) The decision is intended to give the membership shares in
26 the limited liability company a *materially* greater or a *materially*
27 less apparent market value than they really possess.

28 (10) "Material false statement or omission" means an untrue
29 statement of material fact or an omission to state a material fact
30 necessary in order to make the statements made under the
31 circumstances under which they were made not misleading.

32 (11) "Officer" means a person appointed pursuant to Section
33 17703.02, except an officer of a specified subsidiary limited
34 liability company who is not also an officer of the parent limited
35 liability company.

36 (f) This section only applies to limited liability companies that
37 are issuers, as defined in Section 2 of the *federal* Sarbanes-Oxley
38 Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.

17713.13. This title shall become operative on January 1, 2013 2014.

SEC. 21. Section 25005.1 of the Corporations Code is amended to read:

25005.1. “Entity conversion transaction” means a conversion pursuant to Section 1151, 1157, 15677.2, 15677.8, 15911.02, 15911.08, 16902, 16908, ~~17540.2, 17540.8, 17710.02, or 17710.08~~ or a conversion that occurs entirely out of state, unless the interests in the entity resulting from the conversion to be held by the equity holders of the entity being converted as a result of the conversion are not securities. For purposes of Sections 25103 and 25120 an entity conversion transaction is not a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or an exchange of securities by the issuer with its existing security holders exclusively.

SEC. 22. Section 12262 of the Government Code is amended to read:

12262. If the Secretary of State determines that the name of a business entity that has been ordered by a court to be reinstated creates a conflict under subdivision (b) of Section 201, subdivision (b) of Section 5122, subdivision (c) of Section 7122, subdivision (b) of Section 9122, subdivision (b) of Section 12302, subdivision (c) of Section 15612, or subdivision ~~(e)~~ (b) of Section ~~17052~~ 17701.08 of the Corporations Code or any related statute, the reinstatement shall be subject to the business entity filing an amendment to change its name to eliminate the conflict.

SEC. 23. Section 1192.95 of the Insurance Code is amended to read:

1192.95. (a) Notwithstanding Section 1100, an insurer may make excess funds investments in investment pools and cash management pools established pursuant to this section. The pools shall meet all of the following standards:

(1) All participants in a pool shall each be affiliated with one another within the meaning of subdivision (a) of Section 1215 and shall all be insurers, or a pension plan or profit-sharing plan of a participant or affiliate.

(2) The pools shall be a corporation, partnership, trust, limited liability company, or business trust domiciled in the United States with all assets held in accordance with Section 1104.9 and shall be maintained in one or more accounts in the name of or on behalf of the investment pool. Pool assets shall be held under a bank custody agreement that states and recognizes the claims and rights of each participant, acknowledges that the pool assets are held solely for the benefit of each participant in proportion to the aggregate amount of its pool investments, and states that the investments shall not be commingled with the general assets of the custodian or any other person. The pool manager shall be an insurer as defined by Section 826 or a business entity registered as an investment adviser under the federal Investment Act of 1940. The fiduciary duties a manager owes to the limited liability company and its members are those of a partner to a partnership. This duty may not be restricted by agreement.

(3) Any management fee shall be subject to disapproval by the commissioner. Costs directly incurred in acquiring or selling assets, such as commissions, transaction fees, or custodial fees, are not management fees and may be charged by the pool to the participants as long as these fees are on a direct cost reimbursement basis. All costs shall be apportioned to each participant in proportion to its interest in the pool.

(4) All shares of the pool shall be of the same class with equal rights, preferences, and privileges. Each share shall participate equally in dividends and distributions declared by the pool on liquidation in proportion to each participant's interest. When issued, the shares shall be fully paid and nonassessable and shall have no preemptive, conversion, or exchange rights.

(5) Each participant shall be entitled to require the pool to redeem all or any portion of the shares held by the participant on demand without penalty or assessment on any business day.

(6) All assets of a cash management pool shall be assets that participant insurers may lawfully acquire individually and shall be: (A) debt obligations issued by or on behalf of the United States, its territories and possessions, the District of Columbia, and states or their political subdivisions, agencies, and instrumentalities, including industrial development obligations, having a maturity not exceeding one year; (B) corporate debt obligations, other than debt obligations issued, assumed, guaranteed, or insured by a

1 participant or by any affiliate of a participant, having a maturity
2 not exceeding one year and that are rated One or Two by the
3 Securities Valuation Office of the National Association of
4 Insurance Commissioners; or (C) accounts, deposits, or obligations
5 of banks or savings and loan associations insured by an agency or
6 instrumentality of the federal government.

7 (7) All assets of an investment pool shall be: (A) investments
8 that are authorized under Section 1191, other than stock issued,
9 assumed, guaranteed, or insured by a participant or any affiliate
10 of a participant; (B) accounts, deposits, or obligations of banks or
11 savings and loan associations insured by an agency or
12 instrumentality of the federal government; or (C) investments that
13 are authorized under Section 1192, other than securities or notes
14 issued, assumed, guaranteed, or insured by a participant or any
15 affiliate of a participant, or under Section 1194.5 or 1241.

16 (8) The assets of pools shall be required to meet the requirements
17 of and be authorized for investment by a domestic incorporated
18 insurer under Article 3 (commencing with Section 1170) or this
19 article.

20 (9) No pool shall make investments in purchases of, or loans
21 upon, more than 30 percent of the total in par value or more than
22 30 percent of the total number of outstanding shares of the capital
23 stock of any one corporation.

24 (10) Transactions between the pool and its participants shall
25 not be deemed to be material for purposes of subdivision (d) of
26 Section 1215.4 or subdivision (b) of Section 1215.5. Investment
27 activity of pools and transactions between pools and participants
28 shall be reported in the annual registration statement required by
29 Section 1215.4 and pursuant to Section 1215.5.

30 (11) Participation in an investment pool shall be subject to a
31 written pooling agreement that shall be approved by the
32 participant's board of directors and shall provide that (A) the
33 underlying assets of the pool shall not be commingled with the
34 general assets of the pool manager or any other person; (B) each
35 participant must own an undivided interest in the underlying assets
36 of the pool; (C) the underlying assets of the investment pool are
37 held solely for the benefit of each participant; and (D) the pool
38 manager shall make the records of the investment pool available
39 for inspection by the commissioner. Pool agreements shall also
40 specify what type of share participants hold to evidence their

1 beneficial interest in the pool's assets. Prior to the execution of a
2 pool agreement, a participating insurer's board of directors must
3 approve the agreement only after having received a written opinion
4 from an independent outside counsel explaining the ramifications
5 and possible effects that a declaration of insolvency by a participant
6 will have on the insurer's share of the investment pool.

7 (12) No participant insurer may invest more than 10 percent of
8 admitted assets in a single pool or more than 25 percent of admitted
9 assets in all pools combined.

10 (13) Each participant's proportionate share of the assets of a
11 pool shall be deemed to be the direct holdings of that participant
12 for purposes of determining compliance with the investment
13 requirements of this code and shall be reported as such on required
14 quarterly and annual reports. Pools operated as limited liability
15 companies pursuant to Title ~~2.5~~ 2.6 (commencing with Section
16 ~~47000~~ 17701.01) of the Corporations Code shall conform their
17 investments to this paragraph and the requirements of Sections
18 1200 and 1201.

19 (14) The pool manager shall compile and maintain detailed
20 accounting records setting forth (A) the cash received and
21 disbursements reflecting each participant's proportional investment
22 in the investment pool; (B) a complete description of all underlying
23 assets of the investment pool including amount, interest rate, and
24 maturity date, if any, and other appropriate designations; and (C)
25 other records that, on a daily basis, will allow the commissioner
26 and the participants to verify each participant's investments in the
27 pool.

28 (15) Pools shall not borrow or loan assets, except for
29 securities-lending arrangements that are otherwise lawful for
30 insurer participants of the pool.

31 (b) As used in this section, "share" means stock, participation
32 unit, certificate of interest, or other evidence of beneficial
33 ownership in the pool, whether evidenced by an instrument or by
34 a book entry maintained by the pool.

35 (c) The commissioner shall have the authority to review any
36 pool agreement and to disapprove any agreement that does not
37 comply with this section. The commissioner shall have the
38 authority to review the operation of any pool and to order
39 compliance with this section. The commissioner shall have the
40 authority to disallow, as an admitted asset, any pool investment

not in compliance with this section. The commissioner may impose a fee upon any pool to recoup the actual cost of review under this section.

SEC. 24. Section 19141 of the Revenue and Taxation Code is amended to read:

19141. Upon certification by the Secretary of State pursuant to subdivision (a) of Section 2204 or subdivision (a) of Section ~~17653~~ 17713.09 of the Corporations Code, the Franchise Tax Board shall assess a penalty of two hundred fifty dollars (\$250). Upon certification by the Secretary of State pursuant to subdivision (a) of Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, the Franchise Tax Board shall assess a penalty of fifty dollars (\$50). Any penalty assessed under this section shall be a final assessment due and payable at the time of assessment but no interest shall accrue thereon. The assessment shall be collected as other taxes, interest, and penalties are collected by the Franchise Tax Board unless the Secretary of State decertifies the name of the corporation as provided in subdivision (e) or (f) of Section 2204, subdivision (e) of Section 6810, or subdivision (e) of Section 8810 of the Corporations Code.

SEC. 25. Section 23332 of the Revenue and Taxation Code is amended to read:

23332. (a) Except in the case of a taxpayer subject to the provisions of Section 23222a, any taxpayer which is dissolved or withdraws from the state during any taxable year shall pay a tax only for the months of the taxable year which precede the effective date of the dissolution or withdrawal, according to or measured by (1) the net income of the preceding income year or (2) a percentage of net income determined by ascertaining the ratio which the months of the taxable year, preceding the effective date of dissolution or withdrawal, bears to the months of the income year, whichever is the lesser amount. The taxes levied under this chapter shall not be subject to abatement or refund because of the cessation of business or corporate existence of any taxpayer pursuant to a reorganization, consolidation, or merger (as defined by Section 23251). In any event, each corporation shall pay a tax not subject to offset for the period in an amount equal to the minimum tax prescribed by Section 23153.

(b) The provisions of subdivision (a) shall be applied only with respect to taxpayers which dissolve or withdraw before January

1 1, 1973. On and after that date, the tax for the taxable year in which
2 the taxpayer ceases doing business, dissolves or withdraws shall
3 be determined under the appropriate provisions of Section 23151.1,
4 23153, 23181, or 23183, whichever is applicable.

5 (c) (1) A corporation shall not be subject to the minimum
6 franchise tax imposed by this chapter for a taxable year if the
7 corporation does all of the following:

8 (A) Files a timely final franchise tax return for a taxable year
9 with the Franchise Tax Board.

10 (B) Does not do business in this state after the end of the taxable
11 year for which the final franchise tax return was filed.

12 (C) (i) In the case of a corporation other than a corporation
13 described in clause (ii), files a certificate of dissolution or surrender
14 with the Secretary of State, in accordance with Sections 1809,
15 1905, 2112, 6615, 8615, and 12635 of the Corporations Code and
16 Section 3126 of the Financial Code, before the end of the 12-month
17 period beginning with the date the final franchise tax return was
18 filed.

19 (ii) In the case of a limited liability company that is a corporation
20 pursuant to subdivision (c) of Section 23038, files a certificate of
21 cancellation with the Secretary of State, in accordance with Section
22 ~~17356 or 17455~~ 17707.02 or 17708.07 of the Corporations Code,
23 before the end of the 12-month period beginning with the date the
24 final franchise tax return was filed.

25 (2) For purposes of this subdivision, a “final franchise tax
26 return” is a return filed pursuant to Section 18601 on or before the
27 due date of the return, as extended, that the taxpayer designates in
28 the manner prescribed by the Franchise Tax Board as the taxpayer’s
29 final franchise tax return for purposes of the tax imposed under
30 this chapter. A final franchise tax return for purposes of the tax
31 imposed under this chapter is a return filed pursuant to Section
32 18601 where the taxpayer is not required to file a subsequent return
33 to reflect the imposition of tax under this chapter.

34 *SEC. 26. Section 1116 of the Unemployment Insurance Code*
35 *is amended to read:*

36 1116. (a) (1) Every employing unit except a domestic or
37 foreign corporation or a domestic or foreign limited liability
38 company shall, within 10 days of quitting business, file with the
39 director a final return and report of wages of its workers, in such
40 form and containing such information as the director prescribes.

(2) Every domestic corporation and domestic limited liability company shall, within 10 days of quitting business or within 10 days of the commencement of proceedings to wind up its affairs and voluntarily dissolve, whichever expires the earlier, file with the director a return and a report of wages of its workers, in such form and containing such information as the director prescribes.

(3) Every foreign corporation and foreign limited liability company shall, within 10 days of quitting business or within 10 days of the surrender of its right to engage in business of this state in accordance with Section 2112 and subdivision (d) of Section 2114 of the Corporations Code for foreign corporations or Section 17455 17708.08 of the Corporations Code for foreign limited liability companies, whichever expires the earlier, file with the director a final return and report of wages of its workers, in such form and containing such information as the director prescribes.

(4) As used in this section, “quitting business” does not include any change in the form or membership of an employing unit if before and after such change 50 percent or more of the control of management is held by the same individual, or is held by an individual before death and after the individual’s death by the individual’s estate or heirs.

(b) Contributions with respect to a return required under subdivision (a) are due and payable on the first day of the applicable 10-day period established pursuant to subdivision (a) and shall become delinquent if not paid within 10 days of the due date.

(c) The director for good cause may extend for not to exceed 30 days the time for making a return or paying without penalty or interest any amount required to be paid under this section.

~~SEC. 3.~~

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

- 1 _____
- 2 CORRECTIONS:
- 3 Text—Pages 11, 46, 91, 102, 148 and 171.
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